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SYSTEM OF CONVEYANCING,  
WITH  
DISSERTATIONS, AND PRACTICAL NOTES.



BY  
THOMAS JARMAN, Esq.  
OF THE MIDDLE TEMPLE, BARRISTER AT LAW.

IN CONTINUATION OF THE WORK OF THE LATE  
W. M. BYTHEWOOD, Esq.

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VOL. IX.

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AND OF THE LITERATURE OF THE NINETEENTH CENTURY

AND OF THE LITERATURE OF THE PRESENT CENTURY

AND OF THE LITERATURE OF THE FUTURE

AND OF THE LITERATURE OF THE PAST

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AND OF THE LITERATURE OF THE FUTURE

LONDON:

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## PREFACE

TO

### THE NINTH VOLUME.

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IN the interval between the publication of the first and second parts of this Volume, several important statutes affecting the law of Real Property were passed. Of these, the most interesting to the draftsman is the Act of 3 & 4 Will. 4, c. 74, abolishing Fines and Recoveries, the numerous provisions in which are now inserted, accompanied by some practical remarks and Forms of Assurances adapted to the new enactment. As the Editor long contemplated some legislative measure of this nature, he studiously abstained from supplying many Forms of Fine and Recovery Deeds; so that the number of Precedents throughout the present Work, which will be rendered obsolete by the change in the law, is inconsiderable. The doctrine relating to Fines, treated of in the Fourth Volume, will still be useful, not only in regard to titles derived under fines levied before their abolition, but because, in applying the new law, recourse must often be had to the learning of the abolished assurances.



The last Session of Parliament was less prolific of alterations in the law of Real Property than the preceding one; the only important measures of this nature which reached their final stage being a Statute extending the provisions of the Fines and Recoveries Act to Ireland, another regulating the law of Escheat, and a third relating to the Apportionment of Annuities and other periodical payments. The last of these Statutes will be found in the present Volume.

The next part will complete the Tenth Volume, and with it the entire Work. A Gentleman is engaged in preparing a General Index. The Editor hails the approaching termination of his labours with no small degree of satisfaction.

THOMAS JARMAN.

*Southampton Buildings,  
12th Nov. 1834.*



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*Page 375, line 13, of marginal note, instead of settlements read settlement.*

— 410, — 14, *of note, after the words or lease and release, add both*  
which should be inrolled.

— 440, — 11, 12, *of note, dele formerly.*



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IN

# CONVEYANCING.

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3. *Settlements after Marriage, of the Wife's own Property, or supported by a valuable Consideration moving from her or her Friends.*
4. *Settlements void against Creditors, under Stat. 13 Eliz. c. 5.*

## VII. SETTLEMENTS BY PERSONS WHO AFTERWARDS BECOME BANKRUPT OR INSOLVENT.

## VIII. JOINTURES IN BAR OF DOWER, AND HEREIN OF STAT. 11 HEN. 7, c. 10.

## IX. TRUSTS FOR SEPARATE USE, AND PROVISIONS FOR MARRIED WOMEN IN GENERAL.

## X. CONSTRUCTION AND EFFECT OF THE FOLLOWING COVENANTS.

1. *To settle, or to purchase and to settle, Lands of a certain Value.*
2. *To settle all present or future Personalty of the Covenantor.*
3. *To leave one Child a Share equal to those of the rest.*

## XI. SETTLEMENTS IN PURSUANCE OF EXECUTORY TRUSTS IN WILLS.

HUSBAND'S  
FREEHOLDS OF  
INHERITANCE.

## I. AS TO THE REAL ESTATE OF THE HUSBAND AND WIFE.

1. *Wife's Interest in her Husband's Freeholds of Inheritance.*

Dower, what.

Dower is the provision made by the law for a widow, out of her husband's freeholds of inheritance; or, in other words, it is the estate for life, to which the wife surviving the husband becomes entitled, in one third part of all the freeholds of inheritance in possession, of which he was *solely* seised at any time during the coverture, and to which any issue of his by her might by possibility have been heir.

Gavelkind and  
Borough-Eng-  
lish lands.

Out of this proposition must be excepted lands held by the tenure of gavelkind and borough-english, in which the widow's interest is different. In the former, she takes a moiety so long as she continues chaste and unmarried; or, by the better opinion, absolutely during widowhood; Co.

Litt. 141. a.; Rob. Gav. 155; in the latter, she has an absolute estate for life in the whole. 2 Blackst. Com. 82.

In order to entitle a woman to dower, she must be—1st. Lawful wife; but a marriage which is voidable only, and not void, being made between persons within certain prohibited degrees of consanguinity or affinity, (which, it is well known, can be avoided only during the lives of both parties), will confer the right. *Rennington's* case, Noy's Rep. 29. 2nd. The widow must not be an alien, who, by the policy of the law, is incapacitated from holding lands. *Vide ante*, Vol. 4, p. 155. 3rdly. She must be of the age of nine years at the time of the husband's death. 1 Roll. Abr. 675, (A). The fixing of the age of nine (*a*) seems to have been with a view to the capability of having issue, which is supposed to exist at this age. This capability, it should be observed, once begun, is never, in legal intendment, determined; and therefore, the advanced age of the wife at the time of the marriage is no objection to her claim. 1 Roll. Abr. 675, (A); Co. Litt. 40. a.

HUSBAND'S  
FREEHOLDS OF  
INHERITANCE.

Requisites to  
dower.

Dower extends to all lands and tenements. Co. Litt. 30. b.; 2 Blackst. Comm. 131. It arises in respect of mines wrought during the coverture, whether they are under the husband's own land, or have been granted to him under the soil of another. But dower is not, in either case, due of mines or strata unopened. If land assigned for dower contain an open mine, the dowress may work it for her own benefit. Dower of mines may be assigned by metes and bounds, if practicable; otherwise, either by a proportion of the entire produce, or the entire produce for a limited proportional time. If the heir, being of full age, assign excessive dower, he has no remedy at law. If the sheriff assign excessive dower, the heir may have a *scire facias* to obtain the assignment *de novo*. Or, if the heir under age assign excessive dower, he may have relief by writ of admeasurement of dower. *Stoughton v. Leigh*, 1 Taunt. 402.

Dower in  
mines, &c.

The seisin of the husband need not be a seisin in fact—a seisin in law is sufficient; because the wife, having no power to compel the husband to enter, ought not to be prejudiced by his omitting to do so. Thus, if an heir dies before entry, his widow will be dowable; Litt. sect. 448; and even if an abatement take place after the ancestor's death, yet, the wife may claim her dower, if the marriage was before the abatement. 1 Bro. Ab. 255, pl. 17.

What seisin of  
the husband re-  
quisite.

It would be of little utility to dilate upon the other requisites to dower—as, that the husband's estate of inheritance should be *in possession*, and not in reversion or remainder; that he should be *solely* seised, and not as joint tenant; and that he should have the *legal* estate, and not the equitable inheritance only; as these are familiar doctrines, and are

(a) But how could a legal marriage be had with a female under twelve? 1 Blackst. 439. See and consider also stat. 18 Eliz. c. 7.

HUSBAND'S  
FREEHOLDS OF  
INHERITANCE.

As to freebench  
in copyholds.

fully treated of in various approved works. See Park on Dower, *passim*;  
1 Rep. Husb. & Wife, 232.

The widow's title to freebench in copyholds is regulated by the custom of the particular manor. Generally speaking, the widow is only entitled to freebench in the lands of which the husband *died* seised. See *Godwin v. Winsmore*, 2 Atk. 526. And even if the admittance, on the husband's surrender, is not made until after his decease, she is equally excluded; for, though the husband, in such a case, dies actually seised, yet, the subsequent admittance has relation to the time of the surrender. *Benson v. Scott*, 3 Lev. 385. And it has been decided, that, where a copyholder dies, after a contract for sale, the contract will be carried into execution against the wife. *Hinton v. Hinton*, 2 Ves. sen. 631, 638; *S. C. Amb. 277*; *Brown v. Raindle*, 3 Ves. 256.

HUSBAND'S  
FREEHOLDS.

Destination of  
the husband's  
freeholds *pur  
autre vie*.

2. *Wife's Interest in the Husband's Freeholds pur autre vie.*

In lands held *pur autre vie*, limited to the husband and his heirs, or, (which has been held to have the same effect), to him, his heirs, executors, and administrators, *Atkinson v. Baker*, 4 D. & E. 229, the wife takes no estate or interest whatever. If the land is vested in the husband, without words of limitation, or in him, his executors or administrators, it is distributable in like manner with leaseholds for years, as part of his personal estate; which, it is well known, devolves, in the event of his dying intestate, after payment of his debts, to the widow and children, the former taking one third, and the latter two thirds, or, if there is no child, or descendant of a child, to the widow and the next of kin, in equal moieties. *Vide stat. 22 & 23 Car. 2, c. 10*. See also, as to the Customs of London, 2 Bac. Ab. 244, 6th ed.

WIFE'S FREE-  
HOLDS OF IN-  
HERITANCE.

Destination of  
the wife's free-  
holds *pur autre  
vie*.

3. *Of the Estate of the Husband in the Freeholds and the Inheritance of the Wife.*

Of the freehold lands of the wife, whether of inheritance or not, the husband and wife are seised in her right during the coverture; on the determination of which, by the death of the husband, the wife surviving resumes the sole ownership which pertained to her before the marriage, in the same manner as if it had not been interrupted by that event. See *Fitzer v. Fitzer*, 2 Atk. 514. If the coverture is determined by the death of the wife, the destination of her freeholds will depend partly upon their nature, and partly upon extrinsic circumstances. Freeholds *pur autre vie*, limited to the heirs of the wife, will devolve to her heir, whether lineal or collateral, to the complete exclusion of the husband. On the other hand, freeholds *pur autre vie*, limited to her personal representatives, or vested in her, without any prescribed course of devolution among her representatives, belong to the husband, on his taking out letters of administration, subject, of course, to the claims of her antenuptial creditors.

Freeholds of  
inheritance.

Freeholds of inheritance also descend to the heir, to the exclusion of



the husband, unless the latter becomes entitled, for his life, as tenant by the curtesy—a species of estate which merits a particular examination.

Curtesy, like dower, does not attach to freeholds not of inheritance, or to reversions or remainders, Co. Litt. 29, or lands held in joint tenancy; Ib. 30; nor does it accrue where the husband is an alien; for the law will not, by its own act, give an estate to one who cannot keep it. 1 Vent. 417. But curtesy differs from dower in three important particulars:—1st. That it arises only when the wife has issue by the husband capable of inheriting; while dower merely requires in the wife the possibility of having inheritable issue. 2ndly. That it is confined to lands, of which the husband and wife, in her right, are seised in fact; while dower extends to lands of which they are seised in law. 3rdly. That curtesy attaches to the equitable, dower only to the legal inheritance. 4thly. That it is not forfeited for adultery, as dower is, by the express enactment of the statute of Westminster 2, 13 Ed. 1, c. 34. See 3 P. W. 276; *Hetherington v. Graham*, 3 M. & P. 399.

In regard to the first requisite to curtesy, it is to be observed, that it is not necessary that the seisin and birth of issue should be contemporaneous. If, therefore, A. have issue by her husband B., which issue die, and then lands which the issue, if living, might have inherited, descend to her, B. having entered, and survived A., will be tenant by the curtesy, Co. Litt. 29. b.; Perk. sect. 473; so that the capacity which is requisite is a capacity of inheriting freeholds of this description, not a capacity of inheriting these particular lands.

By the custom of gavelkind (Kent), the husband takes a moiety during widowhood, whether he has issue or not, Co. Litt. 111. It is said, that a denizen, in order to be entitled to curtesy, must have issue after the denization, the issue born before not being capable of inheriting; 1 Vent. 418; but this, of course, would only apply if the previously born issue were aliens by birth.

2ndly. The necessity of actual seisin may be illustrated by the following case:—A., husband, and B., wife. Lands descend to B.; but, before her husband enters, the coverture is determined by the death of the wife; the surviving husband has no curtesy. Co. Litt. 29.

But, in order to constitute a seisin in fact, if the estate is in lease, the actual receipt of rent is not essential. Thus, where lands had descended to the wife, as heir in tail, in November, and she lived until the August following, but the husband had not received the rent which became due at the intervening Lady-day, it was held, nevertheless, that he was entitled to his curtesy, Lord *Hardwicke* observing, that the possession of the lessee was the possession of the wife, and there could be no other, without making the husband a trespasser. His Lordship considered, that, if any other person, (as, the trustees under the will of the deceased owner), had received the rent, it might have been otherwise. *De Grey v. Richardson*, 3 Atk. 469.

WIFE'S FREE-  
HOLDS OF IN-  
HERITANCE.  
Requisites to  
curtesy.

Distinction be-  
tween curtesy  
and dower.

Receipt of rent  
during the life  
of the wife, not  
necessary to en-  
title the hus-  
band to curtesy.

The distinction between dower and curtesy, in regard to the different Reason of the

WIFE'S FREE-  
HOLDS OF IN-  
HERITANCE.

distinction be-  
tween dower  
and curtesy, in  
regard to seisin.

nature of the seisin requisite to create it, is not merely arbitrary, but has some foundation in reason, being evidently to be traced to the fact, that the husband has the power of entering upon lands the inheritance of the wife, and therefore ought to suffer for his neglect to do so; while, on the other hand, the wife, having no power to enter upon her husband's lands, her provision is properly made independent of such entry.

3rd. No such apology can be made for the distinction which gives to the husband curtesy in lands the equitable inheritance of his wife, and at the same time withholds from the wife dower in her husband's lands, under similar circumstances; but, if indefensible in principle, it has been convenient in practice; for, in consequence of the necessity of levying a fine, in order to extinguish it, dower has always proved to be a very inconvenient clog to the alienation of property; and the efforts of draughtsmen were long directed to the devising of the best mode of excluding it; in which, however, they are now generally agreed.

Curtesy attach-  
es to an equity  
of redemption.

That curtesy attaches to an equity of redemption was decided in the case of *Casborne v. Scarfe*, 1 Atk. 603; where A., a woman, seised of lands of inheritance, mortgaged them to B. in fee, and then married C., who had issue by, and survived her; Lord *Hardwicke* held, that C. was tenant by the curtesy, because an equity of redemption was to be considered an estate in the lands, was transmissible from ancestor to heir, might be granted, entailed, devised, or mortgaged, and might be barred by a common recovery; also, because a person entitled to the equity of redemption is owner of the land, and therefore, in equity, seised of the estate; a seisin perfected, in the present case, by the wife's possession.

—Executory  
trusts.

Curtesy arises in respect of executory, as well as executed trusts. Thus, where A. devised lands to trustees in fee, in trust to pay his debts, and to convey the surplus to his daughters equally. One of the daughters married and died, leaving a husband and child; and the former was held to be tenant by the curtesy of the daughter's share of the surplus lands: Lord *Couper* observing, that trust estates were to be governed by the same rules as legal estates; and that, as the husband would have been tenant by the curtesy had the case been a legal estate, so he should of that trust estate. *Watts v. Ball*, 1 P. W. 108.

Limitation to  
separate use  
does not ex-  
clude curtesy.

It is now settled, (in opposition to the doctrine supposed to have been established by Lord *Hardwicke*, in the case of *Hearle v. Greenbank*, 1 Ves. sen. 307, *S. C.* 3 Atk. 715), that curtesy is not excluded by a limitation to the separate use of the wife. *Morgan v. Morgan*, 5 Madd. 408. It is observable, that, in the case of property thus limited, the ground assigned for making seisin in fact essential to entitle the husband to his curtesy, namely, that he has the power of enforcing his wife's title to the possession, seems not to apply, as the husband, during the coverture, has no interest in or power over property settled to the separate use of his wife. Whether this did not indicate that curtesy was inconsistent with the nature of such property, deserved consideration.

In equitable contemplation, money impressed with the character of realty has the incidents of real estate; and, by an obvious application of this doctrine, it is held, that if, by marriage articles or any other instrument, money is directed to be laid out in land, to be settled to uses, under which limitations, if executed, the husband of the *cestui que trust* would have been tenant by the curtesy, he will be entitled to a corresponding interest in the money, until it is laid out. *Cunningham v. Moody*, 1 Ves. sen. 174. Hence, it frequently happens, that the husband's claim to curtesy raises the question, whether, according to the rules of construction applied by Courts of equity to such executory trusts, (and which will form a distinct topic of inquiry), the wife takes an estate tail, or any other estate of inheritance, or a less interest. *Dodson v. Hay*, 3 B. C. C. 404.

WIFE'S FREE-  
HOLDS OF IN-  
HERITANCE.

Money directed  
to be laid out  
in land.

It is scarcely necessary to observe, that, as curtesy is derived out of, and is a continuation of the wife's estate, the husband takes the property, subject to all the incumbrances which affected it in the hands of the wife. Thus, if a woman confess a judgment, marry, have issue, and die, the lands, or rather a moiety of them, may be extended in the hands of the tenant by the curtesy. Dy. 51 b, n. 17; 1 Rep. Husband & Wife, 33. Dower, in like manner, is subject to incumbrances created by the husband *before*, but not to those created *after* the marriage, when the wife's initiate title arises. 2 Bac. Ab. 687, 6th ed.

Curtsey subject  
to incumbrances  
created by the  
wife.

Curtsey, at the present day, is not often permitted to arise in lands of which the wife is seised at the time of the marriage, which are commonly put into settlement. It sometimes happens that a settlement operates to deprive the husband of his curtesy, without being an effectual alienation of the inheritance; so that the husband loses the estate which he would have had by act of law, without acquiring any estate from the act of the party; as where a woman, tenant in tail, by lease and release, (without fine or recovery), conveyed lands, of which she was tenant in tail, to the use of her intended husband for life, remainder to herself for life, remainder to the first and other sons of the marriage. The wife died in the lifetime of her husband, by whom she had issue; and it was held, that he had no estate either under the settlement or as tenant by the curtesy; for, the deed, being inoperative to bar the issue, could give him no indefeasible estate; but it excluded him from curtesy, because, on the instant of the marriage taking effect, the estate was vested in the husband, during the joint lives of the husband and wife, under the settlement; and there never was any one moment during the coverture, when the wife was seised in possession of the estate-tail, which was necessary, in order to make the husband tenant by the curtesy thereof. *Doe d. Neville v. Rivers*, 7 D. & E. 276.

Effect of set-  
tlement in pre-  
venting curtesy.

#### 4. *Dower and Curtesy in respect of expired and determinable Estates of Inheritance.*

DOWER AND  
CURTESY.

Dower and curtesy are not necessarily determined by the expiration Dower and cur-

**DOWER AND  
CURTESY.**

tesy may arise  
in respect of an  
expired estate-  
tail.

of the estate in respect of which they, or the inchoate rights thereto, have arisen. Thus, if a man tenant in tail die without issue, his widow will nevertheless be dowable, Perk. sect. 317, assuming, of course, that the entail might have devolved to issue by her. So, in *Paine's* case, 8 Rep. 34, where a man having issue two daughters gave lands to the elder and the heirs of her body, with remainder to the younger and the heirs of her body. The elder married, had issue born alive, and then died in the lifetime of her husband, who claimed to be tenant by the curtesy. To this claim it was objected, that since the wife's estate was determined, so also must the estate of her husband which was derived out of it, and that it could not continue beyond the expiration of the primitive estate. But the Court decided that the husband was entitled to hold the lands during his life. This doctrine seems to be sound in principle, because, as dower and curtesy are incidents of an estate tail, that estate cannot be considered as determined while this ramification remains. It extends to rents, and that as well where the entail is created of a rent *de novo*, as where it is created of a rent *in esse*. Co. Litt. 30, Harg. & Butl. ed.

—in determin-  
able fees.

In regard to estates of inheritance, however, which are determined by the happening of some collateral event or contingency, the case might seem to be different, since the estate does not expire, but is abruptly broken off, which disruption it might be supposed would necessarily carry away with the estate itself all the derivative branches of and incidents to such estate, in like manner as an appointment which overreaches an estate of inheritance defeats the dower which has during the coverture incipiently attached to such estate, (see *Ray v. Pung*, 5 Barn. & Ald. 561), and would, it is clear, determine the dower itself if it had attached in possession by the decease of the owner of the inheritance, (supposing him not to be the donee), previously to the exercise of the power. In spite, however, of this seeming analogy, and in opposition at least to one distinct authority, *Sumner v. Partridge*, 2 Atk. 47, curtesy and dower which are evidently subject to the same rule, have been adjudged to subsist after the determination of the defeasible fee. Thus, where lands were devised to trustees and their heirs, upon trust to receive the rents and apply them for the maintenance of A. until she arrived at the age of twenty-one, or until she married, and upon her arriving at that age or marrying, to the use of A. in fee; but in case she died before the age of twenty-one, and without leaving issue, then over. A. died under twenty-one without leaving issue surviving her, and it was held that her husband (by whom she had had issue), was entitled to curtesy. Lord *Mansfield* founded his conclusion principally on the argument, that, before the statute *de donis*, the husband might have been tenant by the curtesy of a conditional estate. *Buckworth v. Thirkel*, 3 Bos. & Pull. 652, n.; 1 Coll. Jur. 332; 10 B. Moore, 235, n. S. C.

This decision was not satisfactory to the profession, for it seemed incomprehensible, that, after the happening of an event which was to divest

Curtesy held to  
attach notwith-  
standing the de-  
termination of  
the wife's estate.



the entire fee-simple from the first taker, any portion of interest should remain undivested, which is in effect to say, that an indefeasible interest can be derived out of a defeasible inheritance. The doctrine, however, has been since followed in the case of *Goodenough v. Goodenough*, 2 Dick. 795; *S. C.* 3 Prest. Abst. 372; and in the subsequent and better known case of *Moody v. King*, 10 B. Moore, 233, where a testator devised to his son W. and his heirs for ever, all his lands, and if the said W. should die without issue living at his decease (which was held to be the effect in legal construction of the will), then over. This event happened, and the Court of Common Pleas (in answer to a case from Chancery), certified that A.'s widow was entitled to dower; Lord Chief Justice *Best* having previously observed—"As Lord *Alvanley*, in *Doe v. Hutton*, expressed some doubt as to the authority of *Buckworth v. Thirkel*, I shall pause before we certify our opinion to the Vice-chancellor; but my present impression is, that the decision in that case is not only good law, but founded on good sense. Lord *Mansfield* there drew a distinction between estates by condition, and conditional limitations. Here, the husband had an estate of inheritance which could not have been defeated until nine months after his death, and, if he had left a child surviving, such child must [*quære* might?] have inherited the estate in fee-simple indefeasible, in which case the executory devise would be at an end. This, therefore, bears a strong analogy to the case of an estate tail; and the wife is not to be restricted from dower, from the mere circumstance that a tenant in tail may convert the estate into a fee-simple.

DOWER AND  
CURTESY.

Same rule as to  
dower.

It is worthy of observation, that in both the preceding cases of *Buckworth v. Thirkel*, and *Moody v. King*, the curtesy and dower took effect in possession at the instant of the determination of the defeasible fee in respect of which it arose, and perhaps it is not quite clear that the same doctrine would be applied if an interval occurred between the determination of the one, and the taking effect in possession of the other. Thus, if an estate were limited to A., a married woman, and her heirs until B. should marry, and then to B. in fee; if B. married in the life-time of A., it seems rather extraordinary to say, that the estate which had actually been divested out of A. and her husband and vested in B., should, on the death of A. leaving a husband, go back to such husband for his life. It is admitted, indeed, that this variation in the nature of the contingency on which the estate goes over makes no very solid distinction in principle between the two cases, but it constitutes such a difference of circumstances as often leads to a difference of determination, particularly in the application of a doctrine which is felt to be untenable in principle. In such cases distinctions are often raised in order to set bounds to the obnoxious doctrine which would never have been adopted, but for the purpose of avoiding some palpable absurdity to which the doctrine leads, but which was not perceived by those who originally promulgated it. This is one, and not the least of the mischiefs consequent on a departure from

Remarks upon  
*Buckworth v.*  
*Thirkel*, and  
*Moody v. King*.

**DOWER AND  
CURTESY.**

sound principles of law. The learned author of the Treatise on Husband and Wife, (Rop. Husb. & Wife, Vol. 1, p. 38), assumes the absence of any distinction of the nature suggested, for he contends that curtesy would attach under a limitation to A. and her heirs so long as B. has heirs of his body, though the estate determined by the death of B. without issue *in the lifetime of A.* Whether the doctrine of the case of *Buckworth v. Thirkel* would be applied to such a case or not is doubtful, but it may be confidently asserted, that if the circumstances of that case had happened to be such as are here described, the Courts would have had no hesitation in rejecting the doctrine.

Dower and curtesy in respect of a derivative estate.

At all events, it is clear that if the inheritance, in respect of which the curtesy or dower has attached, is a derivative estate, and the original estate out of which it is derived fails, the curtesy or dower necessarily ceases. Thus, if tenant in tail (not having the reversion in fee), convey his estate by fine to A. and his heirs, A.'s widow will be entitled to dower, so long as any object of the intail is living, but on failure of issue the person in remainder will be entitled to the estate discharged from the dower. *Seymour's case*, 10 Rep. 95 b, 96. If the doctrine of this case be compared with the position maintained by Mr. Roper, that a limitation by an owner in fee-simple to A. and his heirs, so long as B. should have heirs of his body, entitles A.'s widow to dower notwithstanding that B. dies without issue during the lifetime of A., the inconsistency between such doctrine and the position in question is palpable. Indeed, the more the point decided by the case of *Buckworth v. Thirkel* is examined, the more one feels disposed to regret that such a decision should have been made or followed. The sensible rule would have been, to say, that the dower and curtesy attached as an incident to the estate so long as the defeasible fee continued, but that, when the determining contingency happened, the dower or curtesy, partaking of the defeasible quality of the fee out of which it was derived, ceased also.

**WIFE'S TERMS  
FOR YEARS.**

**II. HUSBAND'S POWER, DURING THE COVERTURE, OVER HIS WIFE'S TERMS FOR YEARS, AND THEIR DESTINATION WHEN IT DETERMINES.**

Husband's power over his wife's terms.

The husband has an absolute power of disposing of his wife's chattels real during the coverture without her concurrence (*a*), and if he thinks proper without consideration. 1 Roll. Ab. 343, (F), pl. 2; 9 Ves. 98. 177.

(*a*) It is usual to make the wife concur, in order that the title may be independent of the marriage; but it is to be observed, that, in the case of an underlease reserving the rent to the husband, the consequence of the invalidity of the marriage would be, that the rent would be reserved to a stranger; and, therefore, it is better to reserve the rent generally. (*Vide ante*, Vol. 4, p. 348).

And equity following the law has applied the like rule to equitable interests.

WIFE'S TERMS  
FOR YEARS.

Equitable terms.

The marital power of alienation over equitable terms was finally established by the House of Lords in Chief Baron *Turner's* case, 1 Vern. 7; and this adjudication (which overrules some other early authorities, *Doyly v. Perfull*, 1 Ch. Cas. 225), was shortly afterwards reluctantly followed by that great equity Judge, Lord *Nottingham*, in *Pitt v. Hunt*, 2 Vern. 81; *S. C.* 2 Ch. Cas. 73, 2 Freem. 78, and is now a settled rule of property. See *Bates v. Dandy*, 2 Atk. 208; *Incedon v. Northcote*, 3 Atk. 435. And although in the case of *Macaulay v. Philips*, 4 Ves. 19, Lord *Alvanley* seems to have doubted whether the wife had not a claim to a provision out of an equitable term, yet the negative is now clear beyond dispute, (see *Jewson v. Moulson*, 2 Atk. 421), for the reason suggested by his Lordship himself on another occasion, namely, that it might be taken in execution on a *fieri facias*. See *Franco v. Franco*, 4 Ves. 528.

A distinction is taken in *Turner's* case, between the case of a wife being possessed of an equitable term on the gift of another, and that of the term being assigned in trust for the wife *with the privity and consent of the husband*, in which case it is said without doubt the husband cannot intermeddle or dispose of it. Certainly not, if the trust were for the *separate use* of the wife; but otherwise it is conceived that the point is not "without doubt;" for, at the present day, it is submitted that the question would be, not whether the trust was created by the husband or by another, but whether it was for the separate use of the wife, or not; though in some of the early cases, *Tudor v. Samyne*, 2 Vern. 270, the doctrine of *Turner's* case has been applied even to trusts of this nature. Indeed, in that very case the trust is said to have been for the separate use, which would make the decision clearly inconsistent with the doctrines now established. The case of *Tudor v. Samyne*, though cited by Mr. Roper, 1 Husb. & Wife, 174, is clearly untenable:

It should be observed, that a possibility of a term, which cannot by any means take effect during the coverture, will not be affected by the husband's release or assignment; see Co. Litt. 46. b.; 1 Roll. Ab. 344, (B), pl. 11; but it seems that the husband and wife together may bind even such a possibility by a fine *sur concesserunt*. 1 Prest. Abst. 343.

Possibilities.

If the husband and wife grant her term on condition, and the condition is broken upon which they re-enter, the husband shall be possessed as before in right of his wife. 1 Roll. Ab. 344, (G), pl. 13. So, if the husband and wife, in consideration of 10*l.*, grant her term upon condition to be void if they or their executors or administrators pay to the grantee the 10*l.*, and the husband pays the money, this is no alienation to take away the wife's title by survivorship; for though the husband has repaid the money, it is to be presumed that it was raised for his benefit. *Radford*

Assignment on condition.

WIFE'S TERMS  
OF YEARS.

v. *Younge*, 1d. pl. 14. But if the husband assigns his wife's term upon condition that the grantee shall pay a sum of money to his executors, [*quare*, and providing that in default they shall enter?], and the condition is broken, the title to enter is in the husband's representatives, and not in the surviving wife, as the whole term is disposed of, Co. Litt. 46. b., since all the interest not vested in the assignee is limited over to the husband. If the husband lends out money on mortgage in the names of himself and his wife, the benefit of the mortgage will survive to the wife, subject to the claims of the husband's creditors. *Christ's Hospital v. Budgin*, 2 Vern. 683.

Effect of husband paying off mortgage debt.

Payment by the husband of a mortgage debt affecting leaseholds of the wife, and taking an assignment of the legal estate to himself, would not, it is clear, of itself be such an alteration in the nature of the property as to exclude the wife's title by survivorship; but it would entitle him to stand in the place of the mortgagee, as an incumbrancer on the estate, unless he had manifested an intention to exonerate the property for the benefit of the wife, which intention would not be considered as evinced by his entering into a covenant for the payment of the money to the mortgagee on the occasion of the mortgage being transferred to a new lender during the coverture; *Pitt v. Pitt*, 1 Turn. & Russ. 180; a covenant of this nature being intended only for the satisfaction of and as an additional security to the lender, and not to alter the nature of the debt. *Bagot v. Oughton*, 1 P. W. 348.

As to mortgages by and for the benefit of the husband.

If the mortgage was created for the purpose of raising money for the husband himself, of course his payment of such mortgage gives him or his representative no claim against his wife's estate. *Brend v. Brend*, 1 Vern. 213; *Earl of Huntingdon v. Countess of Huntingdon*, 2 B. P. C. Toml. ed. 1: But in such a case it seems to be the better opinion, that his taking the assignment to himself would have the effect of vesting the term absolutely in him, the act clearly not having been done in the character of an incumbrancer.

Effect of husband reserving the equity of redemption to himself.

It seems doubtful whether a mere reservation of the equity of redemption to the husband in a mortgage made by him of the wife's term would bar her title by survivorship. See 1 Prest. Abst. 345. The occurrence of the question should always be prevented by a clear expression of the intention; if it is meant that the wife shall retain her interest, the equity of redemption should be reserved to both her and the husband, or in general terms to the persons entitled, without naming either of them. If it is intended to take away the wife's equitable title, a recital to this effect should be inserted, in order to exclude all ground for applying the doctrine (which is familiar in its application to mortgages of the wife's freeholds), that, in order to change the ownership of the equity of redemption, a clear intention must be manifested. (*Vide ante*, Vol. 5, p. 279). In this respect mortgages of freeholds and mortgages of chattel interests stand on common ground; in regard to the question of the husband's li-



ability to exonerate the estate, they widely differ; for this obvious reason, that the husband has a power of disposition over his wife's term, but not over her inheritance. See 3 Atk. 435. The husband's mortgage, therefore, of the former, whether the wife join or not, operates as his own partial alienation, excluding the wife *pro tanto*; while a mortgage of her freehold is the alienation of the wife herself, by which in the character of surety she subjects her estate to the payment of her husband's debt, he continuing the principal debtor. But it should be observed, that the husband's liability to disencumber his wife's inheritance which has been mortgaged for his benefit, may be negatived by an express declaration, and the intention of the parties would generally be best consulted by its insertion. Lord *Thurlow* at one time inclined to think that parol evidence of the intention was admissible, but a farther examination of the cases convinced him of the contrary. *Clinton v. Hooper*, 3 B. C. C. 201. Such evidence of course must be resorted to for the purpose of shewing the application of the money.

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The husband's equitable alienation of his wife's term, of course, will bind the wife in equity in the same manner as his legal assignment will bind her at law. If, therefore, he sells the wife's term, and dies before the completion of the contract, the wife would be bound to carry it into execution, though the purchase-money (if unpaid) would go to the husband's representatives; *Stead v. Cragh*, 9 Mod. 42; and the principle of course extends to any other binding contract for alienation entered into by the husband. See *Bates v. Dandy*, 2 Atk. 207.

Effect of the husband's contract for sale.

An assignment by the husband to himself, (which purpose could only be accomplished by the circuitry of two deeds), or to a trustee for him, would it is clear completely exclude the title of the surviving wife.

Effect of assignment to a trustee.

Consistently with the husband's power of disposition over his wife's terms of years, it is held, that, if he becomes bankrupt, they belong to his assignees; if he commits waste, or is attainted, or found *felo de se*, Co. Litt. 351, they become forfeited; and, *during the coverture*, they may be taken in execution by his creditors; Co. Litt. 351; 2 Ch. Cas. 73; 9 Ves. 177; 1 P. W. 258; but as, in the language of an eminent writer, "the act of law does not vest any real property in an alien," the term of a wife will not vest in an alien for the benefit of the crown. *Theobald v. Duffy*, 9 Mod. 102; 1 Prest. Abst. 346.

Term liable to husband's creditors, &c., when.

If the wife dies in the lifetime of her husband, the term, whether legal or equitable, belongs absolutely to him, without his taking out administration, his claim being in the marital, and not in the representative character. 1 Roll. Ab. 345, pl. 8; Dy. 251; Co. Litt. 46. b., 351. a.; 1 P. W. 380. And the consequence is, that the husband is not liable, in respect of the property thus devolving to him, to the payment of his wife's antenuptial debts, there being, it is conceived, no difference, in this respect, between chattels personal and chattels real, both of which vest in the hus-

Husband's title by survivorship.

Liability to his wife's debts.

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band, *jure mariti*. *Earl of Thomond v. Earl of Suffolk*, 1 P. W. 46 (a). This exception, which may appear, at first sight, to be scarcely consistent with general principles of right, must be set against the husband's marital liability, which extends to *all* the debts contracted by the wife *dum sola*, which are recovered during the coverture, without regard to the amount of the property he received with her; but which debts, if not liquidated during the coverture, the husband, after the decease of his wife, is only liable to discharge so far as assets come to his hands, as her administrator. *Heard v. Stanford, Forrest*, 173. See also 1 P. W. 469.

Husband not  
deemed a pur-  
chaser for value.

The husband's marital right, however, does not place him on the vantage-ground of a purchaser for valuable consideration; he is esteemed only in the light of a volunteer, and takes the property, therefore, subject to all the equities and incumbrances created by the wife, or which affected it in her hands before the marriage; because, though, in a general sense marriage makes the husband a purchaser of whatever comes to him through the marriage, (of which the learned reader's memory will readily supply him with an example (b)), yet, as no specific interest is assured to the husband, he takes merely that portion of interest, legal or equitable, which the wife happens to be possessed of. *Fitzgerald v. Lord Fauconberge*, Fitzg. 212; *Moody v. Matthews*, 7 Ves. 184. The effect of this doctrine is to raise the following important distinction:—A husband claiming under an actual assignment, by way of settlement, is not affected by an equitable mortgage or contract for sale, created or entered into by the wife, of which he had no notice; while the title of a husband, which is merely founded on the marriage, would clearly be subject to any such mortgage or contract.

Wife's title by  
survivorship.

If the husband dies in the lifetime of the wife, without having exercised the power of disposition which it has been shewn that he possesses over her chattels real, they survive to her; *Salwey v. Salwey*, Amb. 692 (c); and the will of the husband would be wholly inoperative to deprive her of this right, *Pitt v. Pitt*, 1 Turner & Russ. 180, unless, indeed, by the circuitry of putting her to her election, or, in other words, by offering to her acceptance something more eligible. *Druce v. Denison*, 6 Ves. 385. The wife, of course, is not obliged to take out administration to her husband, in order to entitle her to the property in question, as it reverts to her by virtue of her antenuptial ownership. Indeed, according to an

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(a) But, in this case, a term of years does not appear to have formed part of the property, though the point is suggested in the argument.

(b) *Vide cases ante*, Vol. 8, p. 171.

(c) The property, in this case, to which the principle was applied, was the arrears of a rent-charge for life, belonging to the wife, due at the husband's decease.

early authority, the term remains in the wife, notwithstanding the coverture, (see 1 Roll. Ab. 342, (E), pl. 1), though subject to the disposing power of the husband—a doctrine which seems to be open to objection; but the point is of little practical importance. The devolution of the wife's chattels real indifferently to either the husband or wife, as the survivor of the other, independently of representation, and unaffected by the debts and testamentary disposition of the prædeceasing wife, (who, indeed, is otherwise disabled), or of the husband, evidently assimilates the property, in a considerable measure, to a joint tenancy, of which, it is well known, the *jus accrescendi* is the leading characteristic.

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### III. HUSBAND'S INTEREST IN THE WIFE'S CHOSSES EN ACTION.

*Choses en action* are either legal or equitable. A *chose en action* is said to be legal when the remedy for its recovery is at law, as in the instance of bonds, bills of exchange, or other specialty or simple contract debts, given to or contracted with the wife, or stock in the public funds standing in her name. *Choses en action* are stiled equitable when they are recoverable only in a Court of equity, as money in the hands, or stock standing in the name, of a trustee for the wife, or a legacy to her, unreceived from an executor.

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EN ACTION.

*Choses en action.*

By the marriage, property of this kind does not, in the manner of personal chattels in possession, vest absolutely in the husband; but his title thereto must arise in one of the three following ways:—

Various modes  
of the husband  
becoming entitled.

1. *By contract before marriage.*
2. *By reduction into possession during the coverture.*
3. *By surviving the wife, and taking out administration.*

1st. *By contract before marriage.*—What amounts to evidence, in a marriage settlement, of an intention that the husband shall acquire the absolute property in his wife's *choses en action*, is a question which has often been agitated. The following propositions exhibit, in a compressed form, the result of the cases:—

—By antenu-  
tial contract.

*First.* That the mere fact of a settlement having been made by the husband on the wife, is not sufficient to entitle the husband, unless a particular intention in his favour can be collected from the settlement itself, either by express words or by necessary implication. If, therefore, the husband makes a settlement on his wife, simply in consideration of the marriage, and the deed is silent in regard to the nature or extent of her property, as including the *chose en action* in question, or to its forming the consideration for the settlement, the wife's interest by survivorship is not affected. *Lister v. Lister*, 2 Vern. 68; *Cleland v. Cleland*, Pre. Ch. 63; *Salwey v. Salwey*, Amb. 692; *Burdon v. Dean*, 2 Ves. jun. 607; *Druce v. Denison*, 6 Ves. 385, overruling the *dictum*, if not the decision, in *Blois v. Lady Hereford*, 2 Vern. 501. And an express declaration that the hus-

Settlement does  
not necessarily  
entitle him.

WIFE'S CHOSSES  
IN ACTION.

When entitled  
to present choses  
en action.

Stipulations  
concerning present  
fortune do  
not extend to  
future acquisitions.

Words "all the  
personal estate,"  
restrained to  
present estate.

band shall take certain other specified property of the wife, confirms instead of negating his exclusion from any *choses en action* not comprised in that specification. *Cleland v. Cleland*, Pre. Ch. 63.

*Secondly.* But, if by the settlement the wife's property is recited to consist of the *choses en action* in question, and, *à fortiori*, if the settlement is expressed to be made in consideration of it, and perhaps even where it is expressed to be made in consideration of the wife's fortune generally, without any specification of particulars, (though, upon the latter point, the cases do not all agree—compare *Blois v. Lady Hereford*, 2 Vern. 501; *Heaton v. Hassell*, 4 Vin. Ab. 40, pl. 11; *Adams v. Cole*, Forrest. 68), the husband is entitled to all the property of this nature then in *esse*, including, it is clear, a portion already secured, but payable *in futuro*, which has been decided to come under the denomination of sums of money due and owing "*and belonging*" to the wife. *Bash v. Dalway*, 3 Atk. 530. But the circumstance of the person on whose lands the wife's portion is charged, having covenanted, by the settlement, to pay it to the husband, does not entitle the latter. *Howman v. Corie*, 2 Vern. 190.

*Thirdly.* That a settlement by the husband, in consideration of the present fortune of the wife, does not affect the wife's title by survivorship to subsequently acquired property. Thus, where the husband made a settlement on the wife, "in consideration of the portion or fortune which he would receive on his marriage;" she survived her husband, and was held to be entitled, as such survivor, to a share of the personal estate, as one of the next of kin of an intestate, which accrued during the coverture; and the administrator was not allowed to set off against her claim a debt owing from the husband to the intestate. *Carr v. Taylor*, 10 Ves. 574. See also *Adams v. Pierce*, 3 P. W. 11; *March v. Head*, 3 Atk. 720; *Tomkyns v. Ladbroke*, 2 Ves. sen. 591; *Mitford v. Mitford*, 9 Ves.

89. For the purpose of entitling the husband to, or subjecting to the trusts of the settlement subsequently accruing *choses en action*, words pointing at future acquisitions must be used; for the term "all the personal estate" of the wife has been held to be confined to property of which she was possessed at the time of the execution of the settlement. *Pilkington v. Cuthbertson*, 3 B. P. C. Toml. ed. 7. In *Garforth v. Bradley*, 2 Ves. sen. 675, a settlement was made on the intended wife, in consideration of her "present" fortune, and of the covenants thereafter contained. One of these covenants was by the wife's mother, to leave, by her will, to the wife or her children, money or lands equal to what she would give to her other children; the mother bequeathed to the wife a legacy; the husband dying before the legacy was received, it was held to survive to the wife, Lord *Hardwicke* being of opinion that the covenant was exclusively for the benefit of the daughter and the issue of the marriage, and not of the husband, as the covenant might have been per-



formed by a gift to her separate use, under which he would clearly be excluded.

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EN ACTION.

*Fourthly.* That, if the settlement be expressed to be made in consideration of the property, *future* as well as *present*, of the wife, the husband will be absolutely entitled to all the *choses en action* accruing to her during the coverture, though not reduced into possession, and though the wife should be the survivor.

What will entitle the husband to future *choses en action*.

*Fifthly.* That, if the intention be clearly manifested, that the husband shall take the wife's *choses en action*, it is immaterial whether he has made a settlement on her or not; or, in other words, whether the provision which she agrees to accept in satisfaction, comes out of his estate or her own, (see *Adams v. Cole*, Forrester, Cas. Temp. Talb. 169); or, indeed, whether she receives from *any* quarter a provision by way of equivalent or consideration, or not; for marriage alone is a sufficient consideration for all that either of the parties may relinquish to the other.

Wife may be barred without a settlement by the husband.

*Sixthly.* That, if the settlement has disposed of the wife's *choses en action* in certain contingencies only, it leaves untouched the wife's title by survivorship in the alternative events. Thus, where certain sums of stock, the property of the wife, were vested in trustees, in trust for the husband, for the joint lives of the husband and wife; and, in case he should survive her, for him absolutely; and, in case the wife should survive the husband, then as he should by deed or will appoint; and in default, to the children of the marriage; but without making any disposition in the event of the husband's dying in the lifetime of the wife without having exercised his power, and of there being no issue of the marriage; this event happened, and the surviving wife was held to be entitled. *Langham v. Nenny*, 3 Ves. 467.

Effect of a partial or contingent disposition.

The same rule obtains where the husband has not performed the condition on which he is to become entitled. Thus, where A., by articles previously to marriage, agreed to settle an estate on his intended wife, for a jointure, and, afterwards, part for raising the portions of younger children, and then the whole upon the first and every other son in tail, and that the wife's portion should remain in the hands of the trustees, until the conveyances were executed; but it was agreed, that, to the intent to enable A. to execute his settlement, the wife's portion should be applied to the discharge of the incumbrances affecting the estate, and the overplus paid to A. A. died without having made a settlement, and it was admitted to be now impossible to be made: Lord *Hardwicke* held, that, as the surviving wife could not have the benefit of the articles, the Court would not take her portion from her; though his Lordship admitted, that there were cases in which the Court had decreed the execution of articles against some parties, though they could not be performed as to others; but, where the husband had died, and the right to the portion had survived to the wife, there was no case in which the Court had

Effect of husband's non-performance of the condition which is to entitle him to the portion.

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taken that portion from her, unless she could have the benefit of the articles. *Pyke v. Pyke*, 1 Ves. sen. 376. So, in the case of *Mitford v. Mitford*, 9 Ves. 97, Sir William Grant was of opinion, that, while the obligations of the husband remained unperformed, neither he nor any person claiming under him could be permitted to receive any part of the wife's fortune, and that the trustees of the settlement would be entitled to so much of the fund as might be necessary to make good the deficiency. See also *Howman v. Corie*, 2 Vern. 190, *post*, p. 22.

Rule where the wife or husband dies before the jointure is made.

It is clear, however, that, if the wife dies before the arrival of the period fixed for the making of the jointure, the husband will, notwithstanding that event, be entitled to the portion which formed the consideration for the covenant; *Medith v. Wynn*, 1 Eq. Ca. Ab. 70, pl. 15; nor will the husband's decease, without having made the jointure, prejudice the claim of his representatives to the unreceived portion, because the jointress has the power of enforcing the performance of her husband's covenant against the heir or the remainder-man. But see *Meredith v. Jones*, 1 Vern. 463.

Post-nuptial settlement does not bind surviving wife.

It is to be observed, that all the preceding propositions relate to settlements made before marriage, when the wife, if adult, was competent to contract with the husband as to the terms on which he should acquire her *choses en action*; but, settlements after marriage stand upon a different footing. From the incapacity of the wife to bind herself by contract during the coverture, such a settlement is necessarily inoperative to deprive her of her title by survivorship. This principle was distinctly recognised in the case of *Lannoy v. Duke and Duchess of Athol*, 2 Atk. 448, Sand. ed.; and any doubt which may have been cast upon it by the subsequent inconsistent case of *Sykes v. Meynal*, 1 Dick. 368, is wholly removed by the recent decision of Sir John Leach, when Vice Chancellor, in *Stamper v. Barker*, 5 Madd. 157, who held, that a deed of separation entered into by a married woman was ineffectual to take away her title as the survivor of her husband, to an annuity and reversionary interest in stock. Here, indeed, the lady was a minor as well as *covert* at the time of the execution of the deed; but this seems not to be material; for the existence of two disabilities instead of one cannot vary the principle.

2. Husband's Power of reducing into Possession his Wife's Choses en Action.

Husband's power over his wife's legal and equitable choses en action.

The husband may sue for, or receive without suit, the wife's legal *choses en action*, which are immediately recoverable, whether they belonged to the wife before the marriage, or accrued to her during the coverture; though a distinction is to be observed in regard to the form of the action, in these two cases. If the wife were possessed of the *chose en action* before the marriage, she must be joined; but, if it devolved to

her during the coverture, the husband may bring the action either in his own name or in the joint names of himself and his wife. *Bates v. Dandy*, 2 Atk. 288; *Garforth v. Bradley*, 2 Ves. sen. 675; *Rumsey v. George*, 1 Mau. & Selw. 176; *Phillskirk v. Pluckwell*, 3 M. & S. 393.

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EN ACTION.

Equitable *choses en action*, which are immediately recoverable, the husband has also the power of reducing into possession; but, in a suit for the recovery of these, the junction of the wife is equally necessary, whether it belonged to her before, or accrued during the coverture; see *Clark v. Lord Angier*, 1 Ch. Cas. 41; *S. C.* 1 Eq. Ca. Ab. 64; the reason for which is, that the wife, in both cases, is entitled, on behalf of herself and her children, to claim a provision out of the property. The distinction between legal and equitable *choses en action*, in regard to this claim, may be thus illustrated:—If stock in the funds is standing in the name of the wife, the husband, either in the joint names of himself and the wife, or in the name of the husband alone, (according to the fact whether the property was acquired before or during the coverture), may bring an action against the Bank of England, to compel a transfer to him, without being obliged to settle any portion of it on the wife (a); and a Court of equity would not, even at the solicitation of the wife, interfere with this legal right; while, on the other hand, if the stock were in the hands of an executor or trustee, so as to be recoverable only by the husband in a Court of equity, this Court would not allow him or his assignee, (whether the latter had given a valuable consideration or not), to touch the fund, without having ascertained, by its own private examination of the wife, taken either in Court or by commission, that she renounced her claim, unless such claim to a settlement out of it had been barred by the stipu-

Wife's equity to  
a settlement.

(a) Though Lord Rosslyn, in *Pringle v. Hodgson*, 3 Ves. 617, induced the assignees in bankruptcy of the husband to give up their claim to a moiety of the stock, which had been settled on the wife, yet, his Lordship did not attempt to deny their right to the whole. This circumstance, however, has led to much misconception. Mr. Roberts, in his Treatise on Fraudulent Conveyances, p. 289, treats the case as a decision in favour of the wife's "claim" to a provision, though the Lord Chancellor most distinctly intimates that the husband might have recovered, in an action *at law* against the Bank, the stock standing in his wife's name; which is conclusive against her equity. The decision certainly appears to have been shaken by the case of *Mitford v. Mitford*, 9 Ves. 87, between which and *Pringle v. Hodgson* the only distinction is, that in the one the *chose en action* was equitable, and in the other legal. The general principle on which Sir William Grant decided the former case, namely, that the assignment in bankruptcy is not a reduction into possession, entitling the assignees against the surviving wife, applies with equal force to both classes.

As to the case  
of *Pringle v.*  
*Hodgson*.

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lations of an antenuptial settlement, or unless the fund were less than 200*l.* in amount or value; in which case, the rule is to pay it to the husband, as a matter of course, without evidence of the wife's consent. *Elworthy v. Wickstead*, 1 Jac. & Walk. 69. If the wife insists on a provision, a moiety of the fund, or any less proportion which the wife may agree to accept, is settled on her and the children, and the remainder is paid or transferred to the husband; if the wife waives her equity, he takes the whole. Where there is no suit, the conduct of an executor or trustee should be governed so far as possible by the rules on which the Court itself acts. He should inform the wife of her right, and, if she declines to assert it, and not otherwise, the executor should place the fund at the disposal of the husband. But it is not *legally* incumbent on the executor to apprise the wife-legatee of her title to a settlement. He might, with perfect safety to himself, pay the whole legacy to her husband, without any communication with her; and the husband's receipt would effectually discharge him. (See some other points respecting the wife's equity, *ante*, Vol. 5, p. 573).

What is a reduction into possession.

What is a reduction into possession of the wife's *choses en action*, legal or equitable, is a point often raised between the surviving wife and the representatives of the deceased husband.

Not a transfer of stock to the wife's name.

If stock in the public funds, bequeathed to a married woman, is transferred by the executor to her, and continues to stand in her name until the husband's decease, of course it devolves to the surviving wife, as a legal *chose en action* not reduced into possession. *Wildman v. Wildman*, 9 Ves. 174. And where the father of A., a married woman, delivered to her a cheque on his bankers, in her favour, for 10,000*l.*, which she presented, but received, instead of cash, a promissory note payable on demand, (but not, it is presumed, to the bearer), which she delivered to B., her husband; 1000*l.*, part of the money, was received by B., and the residue continued in the banker's hands on the note, during the life of B., who received the interest. On his decease, in the lifetime of the wife, the 9000*l.* was held to belong to her, the Vice Chancellor (Sir T. Plumer) observing, that the banker's note was merely a *chose en action*, and not money; and that the receipt by the husband of 1000*l.*, and of interest on the remainder, was not a reduction into possession. *Nash v. Nash*, 2 Madd. 133.

Rule where wife is residuary legatee and executrix.

Where the husband of a residuary legatee is also an executor of the will, his possession of the residuary property will be referred to his latter character, and will not be deemed to be a reduction into possession, as against the surviving wife. *Baker v. Hall*, 12 Ves. 497. See *Wall v. Tomlinson*, 16 Ves. 413. In the case of *Fort v. Fort*, Forrest, 171, certain stock had been bequeathed to the wife, who was the executrix of the will. The husband and wife transferred the stock into the names of trustees, with the intention of settling it on themselves and the survivor;



but the husband died before the settlement was executed. The surviving wife was held to be entitled.

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Payment to the husband's agent, under a letter of attorney executed by him alone, or by him and his wife, is, of course, a reduction into possession; so that, if the coverture determines while the money remains in the hands of the attorney, it belongs to the husband or his representatives. *Huntley v. Griffith*, 1 Roll. Ab. 342, (D), pl. 7.

Payment to husband's attorney.

It is clear that a mere arrangement by the husband of a legatee with the executor, that a particular fund, which is retained by the executor, shall be appropriated to the payment of a legacy, followed up by the executor paying to the husband, from time to time, the income of the fund, is not alone sufficient to change the property. Thus, where, in support of the alleged reduction into possession, evidence was given of a conversation between the executrix and the husband, respecting the legacy, in the course of which it was agreed that it should be paid out of a mortgage debt of equal amount, belonging to the testatrix's estate, and the executrix offered to call in the money for the purpose, if he pleased; to which the husband replied, that he was not at that time in want of the money, but had rather it should remain in its then situation, he receiving the interest. The executrix accordingly paid him the interest as it became due, taking receipts thus expressed:—"Received of A., the executrix, the sum of 12*l.*, for half a year's interest of 600*l.*, left to my wife by B.'s (the testatrix's) will, as charged upon the estate at Wissendine in Rutland." The Court declared, that what was done by the executrix amounted to no more than an appropriation of so much of the testatrix's assets as were necessary to discharge the legacy; and that a mere appropriation was not sufficient to change the property in a *chose en action* belonging to the wife, which could not be recovered except through the medium of a suit in equity, to which she must have been a party. *Blunt v. Bestland*, 5 Ves. 515. If, in this case, the husband had taken a transfer of the security to himself, and released the executor, it is probable that the decision would have been different.

Legacy not reduced into possession, a mere appropriation.

So, it seems that the taking an additional security for a *chose en action* by and in the name of the husband, does not change the nature of the property, so as to entitle his representative against the wife surviving. Thus, where A. was entitled, under the will of her father, to 400*l.*, charged on lands which had descended to her brother C., and she being about to marry D., a settlement was executed, by which C. covenanted to pay the intended husband the 400*l.*; and it was covenanted, that, on payment thereof, the lands should be discharged. B. survived D., and now claimed the portion, insisting that the covenant from C. was but an additional security, and did not change the nature of the debt; but it still continued a charge upon the land, as was the more plain from the covenant, that, when the portion was paid, the land should be discharged, although it was agreed that the husband, during the coverture, might have released

Effect of taking an additional security.

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or discharged it; and of that opinion was the Court, and decreed for the wife. *Howman v. Corie*, 2 Vern. 190 (a). In this case it is to be observed, that though the husband might have sued on the covenant in his own name, yet, the wife would still have been a party in any suit in equity for the recovery of the legacy.

Commencement  
of action or suit.

It is clear that the commencement of proceedings either at law or in equity, for the recovery of a *chose en action*, is not a reduction into possession; *Gayner v. Wilkinson*, 1 B. C. C. 50, n.; *Pierce v. Thornely*, 2 Sim. 167; *Checci v. Powell*, 6 Barn. & Cress. 253; nor is even the obtaining of a judgment at law or a decree in equity, where the husband and wife are co-plaintiffs (as indeed in equity they must be) in the action or suit: for, if the husband dies before execution or payment, the benefit of that judgment or decree will survive to the wife. *Nanny v. Martin*, 1 Ch. Cas. 27; *S. C.* 1 Eq. Ca. Ab. 68. See also *Oglander v. Barton*, 1 Vern. 396; *Mosely*, 324; *Bond v. Simmons*, 3 Atk. 20; *Adams v. Lavendar*, 1 M'Clel. & You. 41; also 10 Ves. 580. But, if the husband were the sole plaintiff, (as he might be where a legal *chose en action* accrued to the wife during the coverture), a judgment obtained by him would, it is conceived, entitle his personal representatives to the money. (See *Alleyn*, 36, cit. 2 Ves. sen. 677). On this

Effect of a judgment obtained  
by the husband  
alone.

principle it has been held, that a sum of money awarded to be paid to the husband in right of his wife, as residuary legatee under a will, belonged to his executors, and did not survive to her. *Oglander v. Barton*, 1 Vern. 396. But the authority of this case, though recognised by Lord Northington, in *Forbes v. Phipps*, 1 Eden, 502, is considered by Lord Henley, (*vide* 3 Ed. B. C. C., 362, n.), to have been shaken by the opinions of Lord Cowper, (see *Packer v. Wyndham*, Pre. Ch. 415), and Lord Hardwicke, (see *Bond v. Simmons*, 3 Atk. 21), both of whom have laid it down, that a judgment obtained by the husband, who dies before execution, would not bar the title of the surviving wife. It is far from being clear, however, that these Judges had in their view the case of an action brought by the husband alone, as their position is general, and the *chose en action* in the respective cases before them was of that class which cannot be recovered even at law without the junction of the wife, having been the property of the wife before her coverture; and this is rendered still more probable as to Lord Hardwicke, by his Lordship's observations in the case of *Garforth v. Bradley*, 2 Ves. sen. 677; unless, indeed, this is to be added to the many inconsistencies which the reporters have ascribed to this great Judge. (Compare *Roberts v. Dixwel*, 1 Atk. 607, with *Hearle v. Greenbank*, 1 Ves. sen. 307; also 1 Atk. 93, and 3 Atk. 400, with 2 Atk. 511).

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(a) But, perhaps, it may be thought that the non-performance by the husband's father, of his covenant to make a settlement, had some influence on the Court in making this adjudication.

The payment of money or the transfer of stock to the husband, under a judgment or decree obtained by himself and his wife, of course is a reduction into possession; and the transfer of stock to the accountant-general, in the matter of the husband's lunacy, has been held to have the same effect. *Re Jenkins*, 5 Russ. 183. But the repayment of a sum of money to the Master, under a decree in a cause, to be laid out at interest, on Government securities, for the benefit of the parties, is not such a payment as will bar the wife's title by survivorship. *Nightingdale v. Lockman*, Mosely, 230, 390.

With respect to future *choses en action*, whether legal or equitable, not reducible into possession during the coverture, such as reversionary interests in mortgage or bond debts, or in stock in the funds, legacies payable *in futuro*, &c., it is not in the power of the husband, by any act of his, to possess himself of the property; for it is now well settled, that an assignment is not a constructive reduction into possession of a future interest of this nature. (*Vide ante*, Vol. 5, p. 567). If, however, the husband can procure the person entitled to the immediate interest to relinquish it in his favour, the property thus accelerated would, it seems, be brought within the grasp of the husband, (subject, if it were equitable, to the wife's equity, as in other cases); *Doswell v. Earle*, 12 Ves. 473; though the contrary seems to have been assumed in *Pickard v. Roberts*, 3 Madd. 384, stated *ante*, Vol. 2, p. 81; where, however, it is remarkable the Vice Chancellor of that day, (Sir *J. Leach*), did not address a single observation to this peculiarity of the case, but treated the wife's interest as within the common rule applicable to reversionary interests.

The operation of an assignment by the husband on the wife's *immediate choses en action*, is even now matter of controversy. In a former volume (Vol. 5, p. 571), the Editor, assuming that the assignment of a legal *chose en action* was absolutely void against the surviving wife, discussed the subordinate question, whether the same doctrine extended, by analogy, to equitable *choses en action*; and the conclusion which was drawn from the cases was in the affirmative. Considering, however, all that has been advanced on the former point, it is too much to assume even this. As to *choses en action* which are assignable at law, as bills of exchange or promissory notes, on which the husband's transferee sues in his own name, the claim of the surviving wife might be yielded, without involving her title to others which are not so assignable, as debts secured by bond or covenant. In regard to the latter, an assignment by the husband, accompanied by the usual power of attorney, undoubtedly would entitle the assignee to bring an action in the joint names of the husband and wife, during the coverture, if the debt belonged to her before the marriage, or in the name of the husband alone, if it accrued to her afterwards; yet, if before the debt is received or recovered, the husband die, the assignee's action must be brought in the name of the surviving wife; and how can she be compelled to permit her name to be

WIFE'S CHOSSES  
EN ACTION.

Payment under  
a judgment or  
decree.

As to reversion-  
ary choses en  
action.

Whether an as-  
signment is a  
reduction into  
possession.

WIFE'S CHOSSES  
EN ACTION.

used for this purpose? Instead of giving such permission, would she not be entitled to bring the action in her own name and for her own benefit, treating the husband's assignment as a nullity? It does not distinctly appear whether the Judges who have affirmed the power of the husband to assign his wife's *choses en action*, had in view this point, and intended to go the length of maintaining the right of the assignee to bring an action in the name of the surviving wife. But it is time that the inquirer should be conducted, without further prefatory remark, to the authorities themselves.

In the early case of *Burnet v. Kinaston*, Pre. Ch. 121, Lord Keeper *Wright* laid it down, "that if a husband assign his wife's bond for a valuable consideration, this assignment will not bind the wife, if she survives;" and, in the shortly subsequent case of *Packer v. Wyndham*, Pre. Ch. 418, Lord Chancellor *Couper* decided, that an assignment made by a man of his wife's bond, to secure his own debt, was inoperative to bar the claim of the representatives of the surviving wife.

On the other hand, Lord Chancellor *King*, in the case of Lord *Cartaret v. Paschal*, 3 P. W. 197, treated it as clear, that an assignment by the husband of certain *choses en action* of the wife, (including a mortgage and the arrears of an equitable jointure), to secure a debt owing from himself, conferred a good title on the assignee, in opposition to that of the wife surviving. And this part of his Lordship's decree seems not to have been included in its partial reversal in the House of Lords. *Paschal v. Thurston*, 2 B. P. C. Toml. ed. 10. So, in the case of *Bash v. Dalway*, 3 Atk. 533, Lord *Hardwicke* broadly maintained the general position, (though the case did not call for it), that the husband may assign his wife's *chose en action* for a valuable consideration; consistently with which, his Lordship had, in a previous case, (*Bates v. Dandy*, 2 Atk. 207, stated from the Register's Book, 1 Russ. 33, n.), held, that a deposit made by the husband of certain mortgages in fee and for years, the beneficial interest of which belonged to his wife, (having been allotted to, though not legally vested in, the husband and wife in her right, as one of the residuary legatees of a will), in order to secure the loan of a smaller sum to himself, bound the surviving wife *pro tanto*, but did not, (and this seemed to be the only point which was considered to admit of doubt), take away her right to the surplus (*a*). Here again, his Lordship propounded the doctrine, that the husband may assign the wife's *chose en action* for a valuable consideration; adding, that he might release the

Pledge of wife's  
mortgages by  
the husband,  
held to bind her.

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(a) There seems to be much reason for Mr. Russell's inquiry, (1 Russ. 37), on what principle the claim of the mortgagees prevailed against the wife's equity to have a settlement? The surplus which was decreed to the wife appears to have amounted to less than the share which would now be settled on her.



wife's bond without recovering any part of the money. The latter point is indisputable.

WIFE'S CHOSSES  
EN ACTION.

In another instance of a somewhat different kind, (*Incedon v. Northcote*, 3 Atk. 430), the same Chancellor held, that an assignment by the trustee of a term created for securing the wife's portion, by the direction of the husband and wife, who afterwards joined in suffering a common recovery, (the wife being tenant in tail, subject to the term), completely excluded the right of the wife, who survived the husband, to have the portion raised.

In some of the preceding cases, particularly those before Lord *Hardwicke*, the *choses en action* were secured by a mortgage of real estate; which cases have been sometimes thought to form a distinct and peculiar class, the extent of the husband's power being governed by the nature of the mortgage, as being a freehold or chattel interest. Thus, Lord *Cowper*, in *Packer v. Wyndham*, Pre. Ch. 418, at the same time that he decided, as we have seen, that the husband's assignment did not affect the title of the surviving wife to a bond debt, came to a contrary conclusion as to the mortgage for years, which, "being a chattel real, the husband might by law assign without his wife." This reasoning, it is obvious, does not apply to a mortgage in fee, which, therefore, the learned Judge was of opinion the husband alone could not dispose of.

Rule as to  
mortgages.

A distinction of the same kind is adopted by Mr. Roper, in his treatise on *Husb. & Wife*, Vol. 1, p. 221, who, after classing mortgage debts secured by terms among the species of property which is assignable by the husband, observes, that "money of the wife secured upon a mortgage in fee is not equally in the husband's power as money secured by a term of years, so that the decisions in regard to the two are different; for, a mortgage in fee the husband cannot dispose of. The estate, therefore, continuing in the wife, carries to her surviving the money along with it. The security, then, not being assignable without her concurrence, the debt classes among her equitable *choses en action*." This distinction, however, is contradicted by the decision of Lord *Hardwicke* in *Bates v. Dandy*, 2 Atk. 207, where the mortgages (which the husband had pledged,) were of both kinds. The vice of the learned author's reasoning is, that it reverses the rule in equity, which treats the mortgage debt as the principal, and the land as the accessory, making the destination of the mortgage debt follow instead of leading the real security. (A similar remark on Mr. Roper's position is made by the learned editor of *Powell on Mortgages*, 2 Cov. Pow. Mortg. p. 750). The only difference between a mortgage in fee and a mortgage for years, as to their alienable quality, is, that where the mortgage is in fee, a conveyance of the inheritance which is in the wife can only be obtained by means of a fine levied by her and her husband; while, on the other hand, if the mortgage be for years, the husband may, by virtue of his power of disposition over

WIFE'S CHOSSES  
EN ACTION.

his wife's chattels real, vest the mortgage term in the transferee. If, from a defect in the conveyance or any other cause, the legal title to the lands and the property in the mortgage debt become disunited, equity would unquestionably restrain the person in whom the lands are vested from using his legal remedies otherwise than for the benefit and under the direction of the person entitled to the money. See *Bosvil v. Brander*, 1 P. W. 458.

Mortgages and other *choses en action* subject to a common rule.

The same reasoning which shews the absence of any distinction between mortgages in fee and mortgages for years, goes far towards proving both these to be undistinguishable, in regard to the point in question, from *choses en action* merely personal; and such, it is clear, was Lord *Hardwicke's* view in his various decisions on this subject. If the husband assigns a mortgage debt belonging to the wife, and dies before it is recovered by the assignee, of course the question might arise as to the right of the latter to bring an action in her name, precisely in the same manner as if the security were personal only; and it would be impossible to hold, that the right to recover on the bond or covenant resided in one person, and the benefit of the real security belonged to another. If the property in the debt remains in the surviving wife, she must be entitled to the benefit of the real security. If the benefit of the real security belongs to the assignee, he must, of necessity, be entitled to sue in her name on the covenant or bond. The question, then, (embracing as well mortgages as all other *choses en action* not assignable at law), turns wholly on the point, whether the surviving wife is compellable to permit the husband's assignee to bring an action in her name. That the wife is under no such obligation, it may be inferred was the opinion of that discriminating Judge Sir *W. Grant*, who, in the case of *Mitford v. Mitford*, 9 Ves. 99, observed, that "with respect to *choses en action*, they are not assignable at law, consequently the husband's assignment cannot prevent their LEGALLY surviving to the wife," unless, indeed, the use of the word 'legally' may be thought to render the meaning of the position rather equivocal. The doctrine was more fully adverted to by Sir *Thomas Plumer*, in *Purdew v. Jackson*, (stated *ante*, Vol. 5, p. 569); but though he laid much stress upon the impossibility of compelling the surviving wife to allow her name to be used in an action by the assignees, yet the learned Judge appears, from subsequent parts of his judgment, in which he treated an assignment as a reduction into possession of an *immediate chose en action*, to have considered this reasoning to apply exclusively to the case of a reversionary *chose en action*; which is singular, because no action can be brought for the recovery of a reversionary *chose en action*, until it has fallen into possession or become immediate, and when, therefore, all distinction between them has ceased. The only mode of rescuing the late Master of the Rolls from this seeming inconsistency is, by considering the observations in question as applying exclusively to equitable *choses*

*en action* (a). Perhaps even Lord *Hardwicke's dicta*, in *Bates v. Dandy*, and *Bash v. Dalway*, strong and unqualified as they certainly are, are susceptible of the same explanation. At all events, the wife's interest in the *choses en action*, in *Bates v. Dandy*, (which was his leading decision), was equitable, so that the point under consideration could not arise; and no expression of his Lordship, in this or any other case, intimates that he was prepared to control the wife's legal right of action in favour of the husband's assignee: and so difficult is it, on sound principles, to justify any such interference on the part of a Court of equity, (which, in the language of Sir *Thomas Plumer*, 1 Russ. 45, would be not to follow, but to oppose the law), that purchasers and mortgagees of property of this description should pause before they rely on any such doctrine.

WIFE'S CHOSSES  
EN ACTION.

Whatever doubts may exist as to the operation of a particular assignment for value on the wife's *choses en action*, there seems to be none in regard to the general assignment in bankruptcy. It is clear, that, whether the *choses en action* is immediate or reversionary, the assignees in bankruptcy are not entitled to the unreduced property against the surviving wife. *Mitford v. Mitford*, 9 Ves. 87. See also *Pierce v. Thornely*, 2 Sim. 167, stated *ante*, Vol. 5, p. 573, 2nd edit. If the bankruptcy take place during the life of the wife, the assignees, of course, may either themselves reduce it into possession during the coverture, (for this purpose waiting until the property, if reversionary, has fallen into possession), or dispose of the bankrupt husband's contingent right; and in case the husband ultimately survive the wife, the assignees or their grantee will be entitled, through the incipient or contingent right which passed under the commissioners' assignment, (or, adapting the phraseology to the recent statutory alterations, under their official appointment), notwithstanding that the wife's death happened after the bankrupt had obtained his certificate under the commission. *Ripley v. Woods*, 2 Sim. 165. But the notice of this point somewhat anticipates the next and last branch of the present section, namely—

Assignment in  
bankruptcy not  
a reduction into  
possession.

3. *As to the Husband's Title to his Wife's Choses en Action by Survivorship, and taking out Administration to her. And also, as to the Wife's Title by Survivorship.*

If the husband survives the wife and obtains administration to her effects, he, as such administrator, becomes entitled to all her *choses en action*, whether legal or equitable, or immediately recoverable or reversionary, (see *Grosvenor v. Lane*, 2 Atk. 180), subject, however, to the claims of the wife's ante-nuptial creditors; for it is an universal rule, that whatever

Husband's title  
by survivorship  
and administration.

Claims of creditors.

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(a) But as to which, *vide ante*, Vol. 5, p. 571.

WIFE'S CHOSSES  
EN ACTION.

property comes to the husband as administrator, is assets in his hands; and the converse of the proposition, it is conceived, is equally true. And therefore, where a decree in equity directed the payment of a sum of money to the husband and wife, and the wife died before payment, as the husband took the money under the decree, and not as the administrator of his wife, he was held not to be liable, in respect of this property, to his wife's debts. *Forbes v. Phipps*, 1 Eden, 502 (a); see also *Woodyer v. Gresham*, 1 Salk. 116.

Result where  
the husband  
dies without ad-  
ministering.

If the husband, after having survived his wife, dies without obtaining administration, or, after having administered, without reducing into possession any of her *choses en action*, the legal and equitable title therein become disunited. The legal title resides in the representatives of the wife, to whose effects, therefore, an original administration, or an administration *de bonis non*, (as the case may be), must be taken out for the purpose of creating a title to sue, or the power of giving a valid discharge to the debtor. *Burnett v. Kinaston*, Prec. Chan. 118; *Betts v. Kimpton*, 2 Barn. & Adolph. 273. But the representative of the wife will be a trustee for the representative of the husband, who, as the survivor of his wife, acquired the absolute beneficial interest in this property. *Squib v. Wyn*, 1 P. W. 378; *Cart v. Rees*, cit. Ib. 381; *Humphrey v. Bullen*, 1 Atk. 458; *Elliot v. Collier*, 3 Atk. 526, overruling *Burnett v. Kinaston*, Prec. Ch. 118. This beneficial interest, of course, would be bound by a voluntary assignment of the husband. *Squib v. Wyn*, 1 P. W. 378.

As to arrears of  
rent under stat.  
32 Hen. 8, c.  
37.

With respect to arrears of rent, it may just be noticed, that previously to stat. 32 Hen. 8, c. 37, if the husband, seised of a rent-charge in right of his wife, did not during the coverture recover the arrears accrued previously to the marriage, they were irrecoverable by him after his wife's death; but that statute enabled the husband seised in right of his wife of "any estate in fee-simple, fee-tail, or for term of life, of or in any rents or fee-farms," or his executor or administrator, to recover "the said arrearages" in like manner as if his wife had been living.

As to Lord  
Henley's obser-  
vations on  
*Forbes v. Phipps*.

(a) It is difficult to reconcile with the facts of this case the observations of the learned and now noble reporter, in his note to the case of *Heygate v. Annesley*, 3 Brown's Ch. Cas. 362, edition by Eden, where he treats the decree as establishing the right of the representatives of the "deceased husband against the surviving wife; whereas it appears by the report, that Mrs. Jekyll, the wife, died on the 15th of December, 1742, and Mr. Jekyll, the husband, in August, 1744; and this statement corresponds with the whole tenor of the judgment, in the course of which the Lord Keeper distinctly states the question to be, whether Mr. Jekyll took the property in question by the decree *and survivorship*, or as administrator to his wife.



Supposing the husband not to have entitled himself by any of the means before mentioned, (*i. e.* by contract, reduction into possession, or survivorship), to his wife's *choses en action*, they absolutely devolve, on his decease, to the surviving wife, by virtue of her original ownership; *Burnett v. Kinaston*, 2 Vern. 401; and the same rule applies to *choses en action* which accrued to her during the coverture; for, though these are distinguished from the former, in being recoverable at law by the husband alone, yet they also, equally with others, if not reduced into possession by him, survive to the wife. *Twisden v. Wise*, 1 Vern. 161; *Coppen v. —*, 2 P. W. 497; *Day v. Pargrave*, cit. 3 M. & S. 367; *Nash v. Nash*, 2 Madd. 133.

WIFE'S CHOSSES  
EN ACTION.

Wife's title by  
survivorship.

In a late case, the surviving wife was held to be entitled to sue on a promissory note made in her favour, during the coverture, by the husband and two other persons, although no action could have been maintained on the note in the lifetime of the husband, who would, in any such action, have stood in the double and incompatible character of co-plaintiff and co-defendant. *Richards v. Richards*, 2 Barn. & Adolph. 447. It need scarcely be observed, that it is not necessary for the wife, in order to entitle her to recover her *choses en action* acquired either before or during the coverture, to take out administration to her deceased husband, nor is the property in question liable to the claims of his creditors.

As to a promissory note made by the husband and others in favour of the wife.

#### IV. MARRIAGE ARTICLES.

##### 1. General Observations.

Equity, in conformity to its known principles, pays no regard to the form of marriage articles; its attention is wholly directed to the substantial intention and object of the parties. It is immaterial, therefore, that no trustees are interposed, or that the instrument is made to assume the shape of a covenant with or bond to the wife herself, by the husband, of which the marriage is a release and extinguishment in law; *Haymer v. Haymer*, 2 Vent. 343; *S. C.* 1 Eq. Ca. Ab. 63, pl. 3; *Acton v. Pierce*, 2 Vern. 480; *Gage v. Acton*, 1 Salk. 325; *Watkins v. Watkins*, 2 Atk. 96; or that the articles are so framed as to express the intention of one party only, and that not the person whose property is affected by it. Thus, if the husband covenants with the wife to convey her estate, or that her estate shall be subject to certain limitations, this would be construed as an agreement by the intended wife herself to settle her estate in that manner. *Ex parte Hodgson*, 19 Ves. 206. But see *Bash v. Dalway*, 3 Atk. 530. So far, indeed, has this principle been carried, that even a bond given by the husband to the wife, to which she is no party, (but of course executed with her consent), conditioned for enabling her to dispose of her estate as a *feme sole*, is held to operate as her settlement in equity, entitling her appointee to enforce his equitable claim against the heir. *Rippon v. Dawding*, Amb. 565; see

#### MARRIAGE ARTICLES.

Liberal construction of marriage articles.

MARRIAGE  
ARTICLES.

Remarks on  
marriage arti-  
cles.

also *Estcourt v. Estcourt*, 1 Cox, 20. No prudent person, however, will make this liberality of construction a reason for negligence or laxity in framing the instruments in question. Marriage articles ought always to describe with explicitness the limitations and provisions which are to be inserted in the settlement, and to be prepared with all the care and previous deliberation proper to be used when parties are about to make an irrevocable disposition of property; instead of which they are too often hastily drawn up on the eve of the marriage ceremony, in terms the most indefinite and untechnical, in the supposition that opportunity will be afforded for supplying omissions and correcting errors when the conveyance is executed. How mistaken this supposition is, will be obvious, when it is remembered that the rights of the parties are unalterably fixed at the marriage; and though, certainly, technical expressions are not requisite to give effect to articles, the Court only requiring to see the intention, yet, if that intention is inadequately expressed, the obscurity cannot be removed by subsequent parol evidence; see *Tyrrell v. Hope*, 2 Atk. 560 (a); and hence a fruitful source of doubt, if not of litigation, is opened. It would be well if articles merely were never executed, unless an obstacle exists to the making an immediate conveyance, as where the intended settlor is an infant, which, of course, constitutes such an obstacle. The effect of articles in this case is an important, and will form a distinct subject for consideration.

Effect of the in-  
fancy of the in-  
tended settlor.

MARRIAGE  
ARTICLES OF  
INFANTS.

Incapacity of in-  
fants to dispose  
of real estate on  
marriage.

2. *Their Effect when executed on the Marriage of Infants.*

Though the law allows infants to contract marriage, it does not incidentally invest them with the power of disposing of their real property on the objects, actual or potential, of this favoured institution, but leaves those objects to the provision which the law itself has made for them by means of curtesy, dower, and the rules of descent. In one instance, legislative interference has been exerted to remove the disability of infancy; the stat. of Jointures (27 Hen. 8, cap. 10), having been decided to render valid a female infant's acceptance of a jointure in satisfaction of dower; see *Earl of Bucks v. Drury*, 2 Eden, C. C. 60, stated *post*; which, however, serves to illustrate, instead of disproving, the general disqualification. The infirmity which attaches to the conveyances of infants on their marriage applies, to a considerable extent, to their contracts also; but this position embraces some points that will require a particular examination.

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(a) But in this case, a letter signed by the intended husband previously to the execution of the settlement, relinquishing in favour of the wife an interest which, by the settlement about to be executed, had been improperly vested in him, was held to control and qualify, or rather was construed as part of, the settlement.

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MARRIAGE  
ARTICLES OF  
INFANTS.  


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At one period, indeed, an indistinct notion seems to have prevailed, that the consideration of marriage, in certain cases at least, communicated to the contracts of infants, respecting their estate, an efficacy similar to that which the law has stamped on the nuptial contract itself. Thus, Lord *Macclesfield*, in the case of *Cannel v. Buckle*, 2 P. W. 244, laid it down, that if a female infant seised in fee, on a marriage with the consent of her guardians, should covenant, in consideration of a settlement, to convey her inheritance to her husband; if this were done in consideration of a competent settlement, equity would execute the agreement, though no action would lie at law to recover damages. But this was an *obiter dictum* only; for, in the case before his Lordship, the lady who had executed the articles was an adult. Lord *Hardwicke*, too, in the case of *Harvey v. Ashley*, 3 Atk. 613, seems to have thought that the real estate of an infant would be bound by a marriage agreement, provided the husband had issue by such marriage. But this opinion was also extra-judicial, as, in the case then under consideration, the articles related to a money portion, and not to real estate. Subsequent Judges, however, rejecting all such distinctions, have established the general and far more satisfactory principle, that marriage contracts affecting real estate, like all other contracts, are binding only when entered into by persons who are adult, or who, when free from every other disability, have, by acts subsequent to their majority, confirmed those contracts. If, therefore, the infant contractor die during infancy, or afterwards, without having done any confirmatory act, the heir takes the property, unfettered by the articles. Such, it will appear, is the result of the authorities, the examination of which is now to be entered on.

The soundness of Lord *Macclesfield's dictum*, in *Cannel v. Buckle*, was denied by Lord *Northington*, in the case of *Drury v. Drury*, 2 Eden, 58; and Lord *Hardwicke's*, in *Harvey v. Ashley*, by Lord *Alvanley*, in the case of *Caruthers v. Caruthers*, 4 B. C. C. 510; though, in neither of these cases did the point involved in such denial call for determination. It has, however, been placed beyond controversy by several cases:—Thus, in *Pearson v. Pearson*, 1 B. C. C. 113, n., (before the Lords Commissioners in 1770), where the intended wife, (an infant), together with her guardians, covenanted that she should, when she came of age, surrender her copyhold estates, for the purpose of raising younger children's portions, and if there should be no younger children, then to be for the sole use of the intended husband. The husband agreed to settle a considerable annuity upon his wife, by way of jointure, with an augmentation in the event of there being no issue, in which case the wife was also empowered to dispose of 1500*l.*; the wife died under twenty-one, leaving issue, an only son of the marriage, against whom the father filed a bill to have the articles carried into execution; but the Court dismissed the bill. This

*Dicta* in favour of an infant's right to make a settlement on marriage.

Marriage articles of female infant held not to bind her heir.

MARRIAGE  
ARTICLES OF  
INFANTS.

Marriage articles of an infant joint tenant held not to sever the tenancy.

case, however, is said to have had some special circumstances which do not appear in the printed report of it. See 1 B. C. C. 113, n.

The next case is *May v. Hook*, stated 1 B. C. C. 113, n.; *S. C. Harg. & Butl. Co. Litt.* 246. a.; where Lord Chancellor *Camden* held, that certain marriage articles, by which a female infant joint tenant professedly covenanted to settle her freehold and leasehold property, did not sever the tenancy. His Lordship did not rest his decision on the broad ground of infantine incapacity, but rather assumed that the *heir-at-law* of the infant party would have been bound by the articles; for, the main object of his reasoning is to shew that the co-tenants claiming by a paramount title stood in a different situation from the heir.

The subject was brought under the consideration of Lord *Thurlow*, in the case of *Durnford v. Lane*, 1 B. C. C. 106, when his Lordship expressed a strong (though, having regard to the circumstances of that case, an extra-judicial) opinion against the validity of the articles of an infant. His Lordship said—"I cannot think an infant only covenanting as to her estate can be bound. If she is so at all, it must be in reference to her marriage. Nobody has yet said, merely by its being upon marriage, she is bound; but it is said, that, upon a competent settlement, she would be bound. I think the Court should not go into the competence of the settlement. I must lay down, that every settlement shall be considered as good till shewn to be fraudulent. The cases have not gone so far, nor does my opinion. If she had a settlement from her husband, and, after his death, she had taken possession of it, I think she would be bound by the equity arising from her own act. I say this in deference to *Cannel v. Buckle* and *Harvey v. Ashley*. I think she is not bound unless she has availed herself of the settlement of her husband."

Lord *Thurlow's*  
*dictum.*

Marriage articles of a female infant not enforced against her.

His Lordship was called on to decide a question of this nature in the case of *Clough v. Clough*, 24th February, 1787, 3 Wooddes. 453, n., which was a bill on behalf of the infant children of the marriage, after the husband's death, against his widow, praying that articles might be established and specifically performed, entered into before marriage by Patty Clough, the widow, while an infant, and her guardians, for settling her estate and also lands of the husband, as therein mentioned. She by her answer insisted, that she had done nothing after her full age affirming the articles, and that her estates were not thereby bound, waiving any right under the same in the lands of her late husband. The decree declared, that her estate was not bound by the marriage articles, and ordered that the bill should stand dismissed out of Court without costs. It appears, from the statement of the articles for another purpose, by Mr. *Vesey*, 5 Ves. 713, that they contained a provision, that if the wife, after attaining twenty-one, should refuse or neglect to settle her estate, she should forfeit an interest limited to her in the property of her husband,



which seems to bring the case within the principle of Lord *Eldon's* reasoning in the case of *Milner v. Lord Harewood*, 18 Ves. 259, presently noticed; Lord *Alvanley*, however, considered Lord *Thurlow* to have decided the case on the general principle, that an infant cannot be bound by any article entered into during minority, respecting her real estate; and his Lordship's observations evince (what is of nearly equal importance), his (Lord *A.*'s) own concurrence in that principle. See *Clough v. Clough*, 5 Ves. 717. To these high authorities may now be added that of Lord *Eldon*, who, in the case of *Milner v. Lord Harewood*, 18 Ves. 276, referred to the principle in question, which he calls Lord *Thurlow's* doctrine, as being the "settled law" on the subject. But the case before Lord *Eldon* did not raise the general question, as the articles provided, that if, on attaining twenty-one, the infant should refuse to concur in the settlement, she should not take any benefit under the settlement; besides which, the property was leaseholds for lives, and the *cestuis que vie* in existence at the time of the articles, had expired during the life of the husband; and though the leases had been renewed by the husband, Lord *Eldon* was of opinion, that the heir of the wife had no equity to have the benefit of those renewals: the heir could only insist on having the benefit of the interest which was vested in the wife at the time of the marriage, which had actually expired; and the renewal must be for the benefit of all persons claiming under the settlement, whose interests it was the duty of the husband not to aid his wife in defeating.

But, though the infant wife is not bound by the articles, and if she die without having done any confirmatory act, the title of the heir will take effect; yet, on the other hand, it is not in the power of the husband and wife, after her majority, by their conveyance to dispose of the property to other uses; for, if they levy a fine for this purpose, equity will make the persons deriving title under it (not being purchasers for a valuable consideration without notice) trustees for the objects of the articles; so that the assurance, which was intended to give a new destination to the property, becomes an effectual deed of confirmation of the articles. The principle upon which the Court proceeds in this instance is, that, as the persons claiming under the fine derive their title as well through the husband who was bound by the articles, as the wife who was not, they are to be considered as the nominees of, and as standing in the same situation as the husband himself, who, if the conveyance had been made to him, would clearly have been a trustee for the objects of the articles, to the performance of which he had bound himself. Thus, where on the marriage of Thomas Lane with Ann Bowyer, then an infant, articles were entered into for the settlement of her estates, by which it was covenanted that, upon her attaining twenty-one, the husband and wife and her mother should levy fines and settle the estate in trustees to the use of the mother for life, remainder to trustees for the separate use of the wife during coverture, remain-

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Opinions of  
Lord *Thurlow*,  
Lord *Alvanley*,  
and Lord *Eldon*.

Husband and  
wife not allowed  
to defeat the ar-  
ticles by a con-  
veyance to other  
uses.

der to the children of the marriage, in such proportions as the wife should appoint, and, in default of appointment, share and share alike in tail general, remainder to such uses as the wife should appoint, and, in default of appointment, part to the wife and part to the mother in fee. The husband covenanted to permit the wife to enjoy the estate to her separate use, and that he would lay out 2000*l.* to certain uses declared by the settlement. After the wife attained twenty-one, a common recovery was suffered of the estate, the uses of which differed from those of the articles, being to the mother for life, remainder to such uses as the husband and wife should appoint, remainder to the husband for life, remainder to such uses as the wife should by will appoint, remainder to the wife in fee, with a power of revocation; the husband and wife, with the concurrence of the mother, afterwards mortgaged part of the premises for 3000*l.*, and the present bill was filed by one of the trustees of the articles on behalf of the children of the marriage, charging the mortgagees with notice of the articles, and praying a specific execution thereof. Lord *Thurlow*, C., after stating his opinion on the general doctrine, said (addressing himself to the circumstances of this particular case)—“It was not competent to the husband, he being party to the settlement, to sell and create new uses to the purchasers. The husband and wife have joined in selling the estate, for which the husband has been paid. Suppose an annuity had been granted by them of 100*l. per annum*, for 2000*l.*, the feoffee would be declared to be a trustee to the uses of the settlement, but to get his money back again from the husband. When the husband takes it (if the wife was to convey it to him), it would be contrary to his conscience to take it otherwise than subject to the uses of the settlement. If the wife was to hold out, and survived the husband, she might dispose of the estate, but the husband and wife together could not do any act to dispose of it differently from the first settlement. Mr. *Mansfield* says, that if you disable the disposition in favour of the husband, you oblige her to dispose of the estate against her will. I say the wife has manifested her intention, by the fine and recovery, to give it to her husband; then, she having exercised her power, he stands in the circumstance of taking an estate for his own benefit, contrary to his covenant to take it for the uses expressed in the settlement; and, therefore, he shall be a trustee to those uses. The question is, whether he could, in conscience, take it to other uses. It is extremely difficult to say, that, although he could not take it to his own use, he could do it by selling it, and putting the money into his own pocket. If the estate was sold for a valuable consideration, he would be bound to apply the money to the uses in the settlement. The mortgagees say they purchased of the wife as well as the husband, and therefore, though they knew of the settlement, they have dealt fairly. The answer is, the money coming to him is bound by the uses, he not being able, in conscience, to take it otherwise. Those who

claim under the husband must take the estate subject to the same uses, unless the wife's joining makes them not take under the husband." His Lordship afterwards made a decree founded on the principles laid down in his judgment, directing the rents and profits to be applied in liquidation of the mortgage debts during the lives of the husband and wife, and after their decease the plaintiff trustee was to hold the estate, subject to the trusts in the settlement. *Durnford v. Lane*, 1 B. C. C. 106.

It is clear that the principle of the case just stated would not apply where both the intended husband and wife are minors. In such a case, the articles are absolutely null, and would create no obstacle whatever to the marrying parties, as soon as they had become adult, selling or otherwise disposing of the real estates comprised in the articles, whether composing the property of the husband or of the wife, without regard either to the nature of the consideration given by the alienee, or the fact of his having had notice of the articles. If the estate were the husband's, however, it would behove a purchaser to satisfy himself that he had not, by the acceptance of property under the articles or otherwise, bound himself to the performance of them. Had the infancy and the estate both been on the side of the husband instead of the wife, the latter being adult, I apprehend that the doctrine of the case of *Durnford v. Lane* would be quite as inapplicable as in the case just supposed of the infancy of both; since it would be impossible, consistently with the relative legal situation of the husband and wife, to consider the subsequent conveyance by the husband and wife as the act of the wife, the adult party to the articles, (which, let it be remembered, is the principle by means of which the conveyance was controlled in *Durnford v. Lane*), beyond, indeed, the extent of the wife's own interest.

Remarks on the case of *Durnford v. Lane*.

It has been assumed in the preceding observations, that the incapacity of infancy applies equally and indiscriminately to males and females; though it should be observed, that a reluctance to admit this apparently unquestionable doctrine has been sometimes evinced. Thus, in the case of *Slocombe v. Glubb*, 2 B. C. C. 551, Lord *Thurlow*, whom we have seen maintaining, both by *dictum* and decision, the incapacity of a female infant to bind her estate by marriage articles, seemed anxious to avoid the question in regard to a male infant. Lord *Alvanley*, however, in the case of *Caruthers v. Caruthers*, 4 B. C. C. 510, distinctly intimated an opinion, that the disqualification applied to infants of either sex; which conclusion seems to be inevitable on principle; for, great as is the difference which the marriage makes in their relative situation, yet, the law recognises no distinction whatever in their antenuptial competency. Two cases, indeed, have been pointed out by Mr. *Atherley*, in his *Treatise on Settlements*, p. 42, as instances in which articles by male infants have been supported, namely, *Strickland v. Croker*, 2 Ch. Cas. 211, and *Warburton v. Lytton*, 4 B. C. C. 441; but, though it is admitted that in

Disqualification extends alike to males and females.

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both these cases articles by infants were treated as valid, it does not appear in either of them that this was one of the adjudicated points of the case, or that much, if any, objection was made to the obligatory effect of the articles upon the infant; and therefore, it may be presumed that any such objection was precluded by acts of confirmation after majority; which is the more probable, as the latter of the cases was decided by Lord Northington, who, on another occasion, (*vide* 2 Eden, C. C. 58), shewed himself to be the strenuous assertor of infantine incapacity. It is quite impossible that such cases can weigh against the authorities before cited, establishing the inability of a female infant to affect her real estate by marriage articles, or to prevent the application of the doctrine of those cases to the articles of male infants; nor, indeed, is any sexual distinction of this nature attempted to be maintained by the writer in question, who contends for the obligatory effect of the marriage articles of females as well as males; an opinion which it is but fair to remark was advanced before the cases of *Milner v. Harewood* and *Simson v. Jones*, (*post*, p. 40), had removed all doubt on the point.

The effect of marriage articles, where one party is adult and the other not, admits of some other distinctions in relation both to real and personal estate, which deserve particular notice.

Infant husband  
bound by the  
covenant of  
adult wife.

It has been decided, that, where a male infant marries an adult female, he is bound by covenants entered into by her for the settlement of her estate. Thus, where by indentures made between A., the intended wife, of the first part; B., the intended husband, of the second part; C., the father of B., of the third part; D., the grandmother of A., of the fourth part; and E. and F., trustees, of the fifth part—A. conveyed certain real estate to the trustees, in trust for herself for life, for her separate use; remainder to B. for life; remainder to trustees, to preserve; remainder to G., an illegitimate child of A. and B., then born, or such children of the marriage as A. should by deed or will appoint; and in default, to G. and all the children of the marriage, as tenants in common in tail, with remainder to such uses as A. should appoint; and in default, to A. in fee. A. also assigned certain leaseholds and personalty to the same uses; A. and B. also covenanted with the trustees, to convey any other property to which she might become entitled during the coverture, to the uses of the settlement; and also, that she should suffer a common recovery of a moiety of the manor of V., whereof she was tenant in tail, within one month after B. should attain the age of twenty-one, to the use of D., the grandmother of A., for her life, with remainder to the uses of the settlement. The marriage took effect; B. attained his majority; and the present bill was filed by the trustees, against A. and B., to compel them to suffer a common recovery of the moiety of the manor, and to settle certain estates to which A. had become entitled under the will of her grandmother, since the marriage, to the uses of the settlement. B. by his answer insisted, that, being a minor at the time of executing the set-



tlement, he was not bound thereby; but Lord *Thurlow* decreed in favour of the plaintiffs. "If," said his Lordship, "a woman, before marriage, conveys her property, and agrees to settle her general expectations when they shall fall in, and this be done without any fraud upon the intended husband, such an agreement must be executed, and the husband, when of age, must answer her contract. I think, therefore, that in this case it is not necessary to discuss the other question, how far the infant husband could be bound by his own contract; for I go upon the covenant of the wife, who was adult; and the husband's covenant operates no more than to shew his concurrence, and to take away every imputation of fraud from the transaction:" *Slocombe v. Glubb*, 2 B. C. C. 551.

If, in the preceding case, the situation of the parties had been reversed, *i. e.* if the husband had been adult, and the wife, whose estate was the subject of the settlement, had been a minor, the husband would have been bound, and the wife would not; and then, as a consequence of the doctrine already noticed, the settlement would have been good to the extent of the husband's marital interest in his wife's lands; that is, for an estate during the joint lives of himself and his wife; and, if he had had issue by her, a further estate for his own life absolutely, as tenant by the curtesy.

Remarks on the  
case of *Slocombe*  
*v. Glubb*.

The same principles apply to settlements of personal property; for, if the wife is a minor, and the husband an adult, the settlement of her property will be effectual to the extent of the interest which he would derive therein from the marriage. Thus, supposing the infant wife to be possessed of a sum of money, since this would, in the absence of a settlement, fall immediately into the hands of the husband, it would, on the principle in question, be capable of being absolutely subjected to the trusts of the settlement, which, in effect, is the settlement of the husband (*a*). If the settled property is a *chose en action*, legal or equitable, and the husband reduces it into possession, in either of which events it would belong to him, he will be bound to deal with it according to his covenant. *Williams v. Williams*, 1 B. C. C. 152. But the principle in question goes a step farther; for it appears to be settled, that, with respect to leaseholds for years and *choses en action*, which do not absolutely vest in the husband, on marriage, but require an act on his part to perfect his title, the settlement made by the adult husband and the infant wife is effectual and binding on the surviving wife, without any such act. Thus, in the case of *Trollope v. Linton*, 1 Sim. & Stu. 477, where, by articles executed between A., a female under age, and B., who was adult, it was covenanted, that certain leasehold estates to which A. was entitled should be settled upon certain trusts. A.'s father was party to the articles; B. died in the lifetime of his wife, and one of the points was, whether the chattels real survived to the wife or were subject to the articles. *Sir J. Leach, V. C.*,

Settlements of  
personalty, on  
marriage of male  
and female in-  
fant.

Settlement of  
leaseholds of in-  
fant wife effec-  
tual.

(a) Therefore, it would be affected by his being an uncertificated bankrupt, or having been discharged on insolvency.

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Rule where the property is out of the power of the husband.

As to the infancy of the wife in regard to personalty held by her for her separate use, and *choses en action* not reducible into possession during the coverture

held, that they were bound by the uses of the articles, because, as to the personal estate, they were the articles of the husband, and not of the wife; and that, in this respect, there was no difference between the personal estate of the wife, absolutely vested in possession in the husband, and *choses en action* and chattels real, which might survive to the wife.

But, if the property is of such a nature that the marriage confers on the husband no interest in or power over it, of course his concurrence can impart no efficacy to the settlement. Personal property already settled to the separate use of the female infant, and future *choses en action*, not (in event) reducible into possession during the coverture, are in this situation. Respecting the former, a conclusive authority (not yet reported) will presently be adduced. The latter has been the subject of several adjudications, one of which may seem somewhat to clash with the position here advanced respecting such interests, and should therefore be stated. It may be premised, however, that, though the two species of property referred to stand on common ground, in regard to the exclusion of the husband, they greatly differ with respect to the power of the wife, and, consequently, the effect of her acts during the coverture; for, personalty settled to her separate use, she may (being adult) deal with in the same manner as a *feme sole*; and, therefore, her acts of acquiescence and confirmation are to be estimated accordingly: while, on the other hand, future *choses en action* she is quite incompetent to bind or affect while covert; so that, if no interval of discovery occurs during her life, the settlement necessarily fails of effect.

Case of *Harvey v. Ashley*.

Settlement by female infant confirmed under special circumstances.

The case last alluded to is *Harvey v. Ashley*, 3 Atk. 607, which was as follows:—The bill was filed by Mr. and Mrs. Harvey, to have the benefit of a certain money portion, payable to her on the decease of her father under the marriage settlement of her parents, and a contingent interest in personalty under the will of her grandfather, in opposition to a settlement made upon her own marriage with her former husband, then deceased, she being an infant at the time. This marriage was had with the full consent of her parents, though it does not appear that they were parties to the settlement. According to the trusts of the settlement in question, the portion and contingent interest were to be applied partly in liquidation of incumbrances on the husband's estate; the other part was to be laid out in securities, and the interest paid to the husband for life, then to the wife for life, and then to the younger children of the marriage; and the residue was to go to the husband absolutely. The husband died in the lifetime of the wife, who, being still a minor, married the co-plaintiff. There was issue of the first marriage, one daughter. After Mrs. Harvey attained twenty-one, the present bill was filed. The property seems to have been in the same state of contingency as when the settlement was executed. Lord *Hardwicke* was of opinion that this, being an interest in personalty only, to which the husband would be entitled absolutely immediately upon the marriage, (*sed quære?*), and not

an interest in real estate, was bound by the settlement; and that the fact of its being in contingency, and not in possession, was not material. And his Lordship alluded to the circumstance of its being made with the approbation of the parents and guardians of the infant; but he most relied upon certain acts done by the second husband in affirmance and confirmation of the settlement, such as receiving rents, granting leases, and exercising acts of ownership over some real estate which Mrs. Harvey derived under the settlement.

Of the three circumstances forming the ground of Lord *Hardwicke's* judgment, the last seems to be by far the least exceptionable; for, as the contingent interest had not yet become reducible into possession by the husband, it was never in his power; and, therefore, this ground of his Lordship's decision certainly fails. Nor, it is conceived, does the fact of the marriage and settlement having been approved by the parents of the infant, afford a more tenable argument in favour of its validity; for the law has never invested parents and guardians with the power of disposing of the property of their infant children and wards. This view of the case of *Harvey v. Ashley* has the high sanction of Lord *Thurlow*, who, on its being cited to him, in the case of *Durnford v. Lane*, 1 B. C. C. 111, said—"I find it still a very difficult thing to distinguish between its binding personal property, *which never can become that of the husband*, and real property. On the other hand, I cannot conceive that the parent's or guardian's consent can make an essential difference in the contract." Notwithstanding the concluding observations of his Lordship, expressions have from time to time fallen from eminent Judges, tending to encourage an opinion, that settlements made with the consent of guardians possessed an intrinsic and peculiar efficacy in binding the personal property of female infants, irrespectively of the concurrence of the adult husband. Thus, not only did Sir *W. Grant*, in *Ainslie v. Medlycott*, 9 Ves. 19, advert to doctrine of this nature, but Sir *J. Leach*, in the case of *Stamper v. Barker*, 5 Madd. 157, in deciding against the effect of a settlement by a female infant then under coverture, to bar her right by survivorship to an annuity *pur autre vie*, and to the reversion of certain Long Annuities and Three *per cent.* Annuities, observed—"It is true that the law of this Court permits a father or guardian of a female infant to contract, before marriage, on her part, with her intended husband as to her personal estate, because, otherwise it would become his property; and, as to her jointure, because her benefit and the convenience of families require it." It is not surprising, therefore, that an impression should have prevailed, that a settlement made by a female infant, with the consent of her parents or guardians, was binding on her personal property of every description, especially when, to the concurrence of guardians, was superadded the sanction of the Court of Chancery; and it might even be thought, that a settlement of the latter description was capable of being

Remarks upon  
the case of *Har-  
vey v. Ashley*.

As to settle-  
ments by in-  
fants under the  
direction of the  
Court of Chan-  
cery.

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sustained, consistently with the terms, if not with the principle, of Lord *Thurlow's* observations in *Durnford v. Lane*. The point, however, remained undecided, until the recent important case of *Simson v. Jones*, of which the editor is enabled, by the kindness of a friend, to present the following particular and authentic statement:—

Unreported case  
of *Simson v.*  
*Jones*.

Thomas K., by his will, dated the — of August, 1818, after certain specific bequests, bequeathed the residue of his effects to trustees, in trust for his two grandchildren, Thomas H. and Margaret H., as tenants in common, to be paid and transferred to his grandson when he should have attained twenty-one, and to his grand-daughter when she should attain twenty-one, or marry; and the testator declared that the share of his grand-daughter should be for her separate use, exclusive of any husband. After the testator's decease, a suit was instituted in the Court of Chancery, in which the grand-daughter, by her mother and next friend, was one of the plaintiffs. At the age of eighteen, the grand-daughter married. The marriage took place under the sanction of the Court, the settlement having been duly approved by the Master. By this settlement, which was made between George E., the intended husband, of the first part; Margaret H., the infant, of the second part; John L. and Mary his wife, (the latter described as the mother and guardian of the infant), of the third part; and trustees, of the fourth part; it was declared and agreed, that the moiety and share of the infant, under the said will of T. K., in certain leaseholds for years, (which formed part of the bequeathed residuary property), should be vested in the trustees, upon trust, after the solemnization of the intended marriage, for sale, with the usual indemnity clauses to purchasers. By virtue of this trust, the settlement-trustees sold the leasehold premises in question, (the other moiety having been vested in them upon similar trusts for sale), by public auction, during the minority of the wife. The abstract of title was laid before a learned and able friend of the editor, on the part of the purchaser, who objected to the title, on account of the infancy of the settlor, in the following opinion:—"It is clear, from the cases of *Trollope v. Linton*, 1 Sim. & Stu. 485, and *Durnford v. Lane*, 1 Bro. C. C. 112, that the settlement of the personalty of a wife, being an infant, is valid, from the circumstance of its being deemed the settlement of the husband, and binding on the property, on account of its vesting in him, in the marital right; and the opinion of Lord *Hardwicke*, in *Harvey v. Ashley*, 3 Atk. 607, that such a settlement is good of itself, was not necessary to the decision of that case, nor the ground of such decision; and the reason given by him in p. 613, (such reason being, that the property would otherwise vest in the husband), is insufficient for the opinion expressed, and tends to shew that the doctrine of the other cases is correct. Now, regarding the moiety of the late Margaret H., such moiety is by the will given to her for her separate use, exclusive of any husband, and she is in minority; and, as this moiety,

Opinions of  
counsel on the  
validity of the  
settlement of a  
female infant,  
made under the  
sanction of the  
Court.



for the reason already suggested, became vested in her specifically, the husband could not settle it, because of the trust for separate use; she could not settle it, on account of her minority; and I cannot find any authority or principle on which the Court could create the trust for sale and conversion of it, and settle it, any more than equity can, in the case of realty belonging to a female infant. It appears to me, that, when she is of age, or, at all events, when and if she survives her husband, she may repudiate the settlement. The Court cannot deprive her of her property, or of any interest in it, for the benefit of her children; if the Court could deprive her of any interest in favour of children, it could equally deprive her wholly of it, for the benefit of other persons. The title seems to me clearly bad on this point."

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of *Simson v.*  
*Jones.*

The opinions of three other gentlemen of eminence were then taken, all of whom concurred in affirming, with various degrees of confidence, that the sanction of the Court rendered the settlement obligatory on the infant, though one of them considered the point as too doubtful to be relied on by a purchaser. The following is a transcript of his opinion:—"If the term had belonged to a wife absolutely, I should have been of opinion that the articles were binding on her, on the simple ground that, immediately after the marriage, the husband (unless restrained by articles) might have aliened the term. It is therefore clear, in my opinion, that a Court of equity cannot, on the marriage of a female infant, settle her real estate so as to bind her and her heirs. The simple question in this case is, whether a Court of equity can make a settlement for an infant having a separate estate in personalty or chattels real, so as to bind her by that settlement. The same question would arise, in effect, on a settlement made by the Court of the like property of a male, being an infant; and whatever be the rule of law, or rather of equity, in one case, is equally the rule in the other case, because in each case the Court is acting on the property of an infant; and it is not of any consequence that the property is modified, in the case of a female, by a separate estate. It is not by any means clear, and certainly not within my knowledge decided, that the infant would be bound by a settlement made of his personal estate by the Court; and I am satisfied this title is too doubtful to be accepted by a purchaser, without confirmation by the wife when adult, or the decree of a Court of equity on the point of title. The strongest case in favour of the settlement is that by which the wife was held bound by a settlement of her property during infancy, which included *choses en action*. See 2 Atk. 615. That case was rested on the rule of convenience, viz. the protection of the wife against the right of the husband, if the *choses en action* had fallen into possession during coverture. Now, this reason does not apply to a separate estate, because, in no event could the husband become the proprietor. Still, however, it is of importance that the Court held the wife to be bound; and if in this case the wife be

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male infant of  
property in  
which the hus-  
band takes no  
interest, invalid.

bound (and I think she is bound), it is on the ground that the Court has a right, for the sake of the infant, to bind the infant, to protect her from an injurious alienation after she shall be adult; but no case of which I am aware has put the law on that broad footing." Amidst this conflict of opinion, resort to judicial authority was inevitable, and the trustees accordingly filed a bill against the purchaser, to compel the specific performance of the contract. After an elaborate argument, Sir *J. Leach*, M. R., delivered the following judgment:—"Of the personal property, generally, of a female infant, a settlement may be made in contemplation of her marriage, because the personal property becomes the property of the husband; the settlement, therefore, which abridges the rights of the husband in the property, is a settlement made by the husband, and is not considered as a settlement made by the wife, for the wife, being an infant, is incapable of making a settlement. With respect to the real estate of the infant, no settlement can be made to bind the female infant, because the husband does not acquire the absolute property in the real estate, although he acquires a limited interest in it for life, during their joint lives or coverture. Now with respect to this property, which is a chattel interest, given to the female infant, for her separate use, the husband acquires no interest in it; it would therefore be singular to hold that the female infant would be bound by such a settlement, because it would be her settlement. The single question would be, whether she has power to make a disposition of her property during her minority. If she were of age there would have been no doubt. It appears to me, therefore, that this, being a chattel interest limited to the female infant's separate use, is a stronger case against the settlement than in the case of real estate, because the husband could take no interest in it whatever. The only ground which was pressed upon the Court, which had any effect upon me was, that this was a settlement made upon a reference to the Master, after his approval had been given, and that therefore it would stand. That, however, does not alter the case, and the question is, whether the Court would give its sanction to such a settlement. *I am of opinion, that the Court has no authority whatever to enable a female infant to dispose of her property during her minority*; the Court will make an election on behalf of the infant, because that is of necessity, and for the benefit of the infant; but if the Court could give authority to a female infant to settle a chattel interest limited to her separate use, the Court could give authority also to a female infant to settle real estate. I cannot see a solid distinction between the two cases." *Simson v. Jones*, 15th Feb. 1831, MS.

Against this decree the plaintiffs appealed to the House of Lords. The following is a copy of the reasons for the appellants:—"Reasons:—I. For that, although the acts of infants, taken simply by themselves, may be void or voidable, according to circumstances, yet, it has

been repeatedly decided that settlements of the personal estate of infants, made by parents or guardians on their behalf, before and in consideration of marriage, are conclusively binding upon such infants.

"II. For that Courts of equity possess, and have uniformly exercised, an intrinsic jurisdiction and authority (including and exceeding all the powers recognised as existing in guardians) to deal in the way of settlement, and for other beneficial purposes, with the property, and more particularly the personal property of infants, without reference to the competency either of the infant or of any other party; and that, in this case, the settlement, having been made not only with the approbation of the mother and guardian of the infant, but under the deliberate sanction and by the order of the Court, is unimpeachable.

"III. For that an interest limited for the separate use of a married woman is altogether a creature of equity, which the Court modifies and regulates without reference, and, in some particulars, in opposition to the principles of the common law; and a peculiar interest, thus created by the Court, ought not to be allowed to stand in the way of the salutary protection which the Court would otherwise extend to the infant. It would be a singular result that, although if the moiety in this case given by the testator to his granddaughter had been given to her simply, and without any expression of intention on his part to secure the property from the husband, the Court would have carefully settled the property; yet here, the testator having expressed that intention (but without restraining anticipation), the Court should, for that very reason, abstain from giving her the protection to which she would otherwise have been entitled.

"IV. For that the holding of the objection urged in this case to be good would be of extensive injury in invalidating many settlements made on the marriage of infants, on the faith of the competency of parents and guardians, or of the Court of Chancery, to deal with their personal property.

"H. BICKERSTETH.

"JOHN EVANS."

The reasons for the respondents are as follow:—

"I. Because, during the infancy of Margaret H., no valid settlement could be made of the leasehold estates in question, which were bequeathed to trustees for her sole and separate use; the principle upon which settlements of the personal and chattel real property of female infants, on their marriage, are supported, being, that marriage is a gift to the husband of the personal estate, and a complete power of alienation over chattel real property of the wife, and that the settlement is to be considered as the settlement of the husband; a principle wholly inapplicable to this case, where the infant's property is settled by will to her separate use, for the express purpose of preventing it from vesting in the

MARRIAGE  
ARTICLES OF  
INFANTS.

Unreported case  
of *Simson v.*  
*Jones.*

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of *Simson v.*  
*Jones.*

husband, or being liable to his control; and where, therefore, it has never vested, and could not vest in the husband, or be aliened by him.

"II. Because the circumstance, that the settlement in question was approved by one of the Masters of the Court of Chancery, and his report confirmed by the Court, does not confer upon the settlement any validity, as a disposal or alteration of the property bequeathed in trust for the sole and separate use of the infant, since the infant, or the Court on her behalf, had not any power to alien or bind her separate property during her minority, and the husband had not any right of disposition or alienation over the property.

"EDWARD B. SUGDEN.

"RICHARD PRESTON.

"JOHN STUART."

The parties, however, came to an agreement for the termination of the suit without farther litigation, the appellants acquiescing in the decree of the Master of the Rolls, whose judgment certainly sets the question in a very clear point of view, and, it is conceived, places his decision on principles which it is impossible to impeach.

SPECIFIC  
PERFORMANCE  
OF ARTICLES.

Execution decreed at the suit of collateral relations.

3. *At whose Instance, and against whom, Performance may be enforced.*

At a very early period, the execution of voluntary covenants to settle lands on collateral relations was enforced in Courts of equity. Thus, where A., by articles between him and B., reciting that a marriage was lately had between C., who was the nephew of A. and the son of B., and D., his wife, without the consent of B.; A., in consideration as well of natural affection to C. and his wife, as for their regaining the good will of B., covenanted with B., within one month after the death of A.'s brother, (whose presumptive heir he was), to convey the manor of H. to C. and his wife, and the heirs of C., reserving a life estate to him (A.). The brother died, the manor of H. descended to A., and the Court compelled him to settle it according to the articles. *Wiseman v. Roper*, 1 Ch. Rep. 158. So, where A., on his marriage, covenanted to purchase lands of 350*l. per annum*, and settle them on himself for life, remainder to his intended wife for life, remainder to their first and other sons in tail male, remainder to the heirs male of the body of A., by any other wife, remainder to his brother B., for life, remainder to his first and other sons in tail male, remainder to his brother C. for life, remainder to his first and other sons in tail male; the husband being dead without issue, the execution of the articles was decreed on a bill filed by the brothers against the covenantor's widow, to whom he had devised his real and personal estate. *Vernon v. Vernon*, 2 P. W. 594.

Whether damages are reco-

In several instances, (see 3 Atk. 191; 1 Ves. sen. 74), Lord *Hardwicke* treated the ground of this decision as being, that an action might



have been brought against the covenantor for damages; but at the present day the general opinion is, that damages cannot be recovered for the breach of a voluntary covenant, as indeed was admitted by the same distinguished Judge, in regard to *implied* covenants. See *Saltern v. Melhuish*, Amb. 251. However, independently of any such question, it is now well settled, that equity will enforce the specific performance of voluntary articles in favour of those persons for whom the covenantor is under a natural and moral obligation to provide, (namely, his wife and children), *but not, it should seem, of any other class of volunteers.*

SPECIFIC  
PERFORMANCE  
OF ARTICLES.

verable under  
voluntary cove-  
nants.

Thus, in the case of *Beard v. Nuthall*, 1 Vern. 427, where A., after marriage, bound himself by a voluntary bond to settle a jointure of a certain value on his wife, and afterwards settles lands of that value, and thereupon the bond was delivered up. The husband died, the wife was evicted, and, as his administratrix, filed the present bill against the next of kin, claiming to be allowed to retain the value of the bond against them, there being no creditors. And the Court decreed accordingly, notwithstanding the bond was after marriage, and voluntary; for an agreement *under hand and seal* (a), though voluntary, ought to be decreed by this Court, and the delivery up of the bond by a *feme covert* could in no way bind her interest.

Voluntary bond  
in favour of a  
wife, held to be  
binding.

Lord *Hardwicke*, too, though in the case of *Darley v. Darley*, 3 Atk. 400, he declared that a voluntary promise by a husband with a wife could not be carried into execution in that Court, being *nudum pactum*; yet, in the case of *Fitzner v. Fitzner*, 2 Atk. 511, his Lordship enforced against the husband himself a covenant for a separate maintenance, at the instance of the wife and child of the covenantor. See also *Guth v. Guth*, 3 B. C. C. 614 (b).

The right of a child to enforce the specific performance of a covenant to convey, was established in the case of *Goring v. Nash*, 3 Atk. 186, which was as follows:—A., on the marriage of his son, agreed to settle the estate in question on the son and his issue, in strict settlement, with remainder to the settlor's daughter, Lady Goring, in tail, who, (the son being dead without issue), filed the present bill praying a specific performance of the articles. Lord *Hardwicke* decreed accordingly, upon three grounds:—1st, that if the son himself had called for the execution of the articles, such execution (extending, of course, to the limitation in favour of the plaintiff), would have been decreed; 2ndly, that the trustees would be clearly entitled to recover the whole value of the estate at

Voluntary cove-  
nant to settle on  
a child enforced.

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(a) But, can this make any difference in a Court of equity? See *Sutton v. Chetwynd*, 3 Mer. 249, (*post*, p. 46), where there can be no doubt, (though the point was not adverted to), that the articles were under seal.

(b) As to separation deeds between husband and wife, *vide post*.

**SPECIFIC  
PERFORMANCE  
OF ARTICLES.**

Specific performance refused to a stranger in blood.

law, out of the real assets; 3rdly, that this limitation was part of the provision made by a father for a daughter, who might be considered as a purchaser, by reason of the natural obligation of parents to provide for their children.

That equity will not decree a specific performance at the instance of a stranger, was decided in the case of *Sutton v. Chetwynd*, 3 Mer. 249, where, previously to the marriage of the Countess of Bath with Sir James Pulteney, it was agreed that the estate of the Countess, within six months after the marriage, should be settled (subject to certain trusts for the benefit of the Countess and the children of the marriage, which failed in the event,) upon such trusts as were expressed in the will of her mother concerning the same. Under these limitations, an estate in remainder in fee would have been vested in Sir R. Sutton, whose grandson and heir-at-law filed the present bill against the heir-at-law of the Countess, who had died without issue, and was a stranger in blood to Sir R. Sutton, praying a specific performance of the articles. Sir *W. Grant*, M. R., dismissed the bill, on the ground that the plaintiff, as a stranger and volunteer, was not entitled to such a decree. His Honour observed—"There are certainly cases in which a Court of equity has executed covenants in marriage settlements in favour of collateral relations, but I am not aware of any in which it has been laid down, that a covenant in favour of a stranger is to be carried into execution merely because it is found in a marriage settlement."

So, in a recent case in the Exchequer, (*Groves v. Groves*, 3 You. & Jerv. 163), the plaintiff sought to enforce the specific performance of a written undertaking, by which the defendant, after acknowledging that a conveyance of an estate, made by the plaintiff to his (the defendant's) deceased father, (who was the plaintiff's brother), had been made for the purpose of giving him a vote in the election of a Member of Parliament, agreed to convey it back to the plaintiff; the bill was dismissed, the agreement being voluntary and without consideration.

Rule as to collateral relations.

In the case of *Sutton v. Chetwynd*, the person seeking to enforce performance of the covenant was a total stranger; and therefore, it may not be thought necessarily to clash with the early decisions, in which the Court decreed the execution of the covenant, at the suit of collateral relations. Against these decisions it seems difficult to bring any cases bearing more directly upon the point than those which have negatived the interference of the Court to supply the defective execution of an appointment, or a surrender of copyholds to the use of the will, except in favour of a wife, children, or creditors; the principle of which cases certainly appears to govern the present. See these cases collected, *Scriv. Cop.* 134; *Sugd. Pow.* 5th ed. 359; 2 *Chance, Pow.* 493. On the assumption of such an analogy, Sir *Thomas Plumer*, in the case of *Martin v. Mitchell*, 2 *Jac. & Walk.* 425, expressed an opinion, that the Court would not sup-

Defective execution of power by married woman not supplied.

ply the defective execution of an appointment by a married woman, since she was incapable of binding herself by a general contract, the existence of which formed the ground of equitable interference in these cases. See also Lord *Redesdale's* judgment, in *Shannon v. Bradstreet*, 1 Sch. & Lef. 58.

If a valuable consideration has been given by a person who, by himself or his representative, claims the execution of articles, of course no objection can be made to his title or relief, on the ground that he is not within the favoured degree of relationship. Thus, where, on the marriage of A., who was entitled to a sum of 500*l.*, (which was in the hands of her father, subject to the contingency of her not surviving him), and a certain real estate, articles were executed, by which it was agreed that the father should give her the 500*l.* immediately, and that her real estate should be settled to the use of herself for life, then to her issue by her intended or any other husband, then to her sister and her issue, then to the father and his heirs. The father being dead, (and, it is rather to be inferred, the daughter also), and the prior limitations having, it should seem, failed, Lord *Hardwicke* decreed the specific performance of the articles, at the instance of the heir of the father, on the ground that the immediate payment of the 500*l.* was a sufficient consideration for the benefit given him by the articles. *Stephens v. Trueman*, 1 Ves. sen. 73.

And if the consideration has moved from a third person, on behalf of the object of the limitation, the doctrine is equally applicable; and in these cases it has been considered, that, to connect the limitation of the estate with the alleged consideration, it is sufficient that the person from whom the consideration has proceeded should stand in such a relation to the object of the limitation, as to raise a presumption, (without actual proof, or even any express statement), that he stipulated for its insertion. Thus, in the case of *Osgood v. Strode*, 2 P. W. 246, the execution of marriage articles was decreed at the instance of the nephew of the husband, settlor, on the ground of his grandfather, the husband's father, who had an interest in the property, having joined in the settlement. (See some observations on cases of this class, *ante*, Vol. 8, p. 161).

But, though a person whose claim is not supported by a valuable or meritorious consideration, cannot himself compel the execution of a covenant to settle, yet he may incidentally have the benefit of a suit instituted by a more favoured object; for, in decreeing specific performance, the Court executes the *entire* articles, embracing limitations to persons at whose instance it would *not* have exerted its interference. See 3 Atk. 189.

The same principles which are applicable to covenants to settle, apply to defective conveyances, *i. e.* instruments which are intended to operate, but are incapable, by reason of some defect or informality, of operating as an immediate transfer of the subject matter; as, where a person executes a deed of assignment to trustees, of a share in the public stocks, without transferring it in the books of the Bank, *Cobnan v. Sarrel*, 3 B.

SPECIFIC  
PERFORMANCE  
OF ARTICLES.

Valuable consideration renders covenants binding.

As to considerations from third persons.

Persons not competent to enforce performance, may have the benefit of another's suit.

As to defective conveyances.

SPECIFIC  
PERFORMANCE  
OF ARTICLES.

C. C. 12, or signs a memorandum professing to assign shares in a canal navigation, without a compliance with the forms prescribed by the act creating the property. *Antrobus v. Smith*, 12 Ves. 39. In such a case, a mere volunteer, who founds his claim neither on a valuable nor meritorious consideration, obtains no relief; and the early case of *Watts v. Bullas*, 1 P. W. 60, which supports a contrary doctrine, is overruled. And it should be observed, that a mere volunteer, even of the most favoured class, as a wife or child, has no claim to damages for the defect of the conveyance, by reason of the implied warranty resulting from the words of conveyance. *Saltern v. Melhuish*, Amb. 251.

Whether execution would be decreed against a child unprovided for.

An observation should be made as to the persons against whom the Court will execute the voluntary covenants under consideration. It seems probable, (as suggested by Mr. Atherley, in his Treatise on Settlements, p. 135), that the Court, in decreeing the execution of such covenants, would be guided by the same principles which have regulated and limited its interference in supplying surrenders of copyholds to the use of the will, (when these were necessary), and defective appointments, and therefore would refuse its aid to a younger child against an elder who was unprovided for. If the heir is provided for, or, being collateral, whether he is provided for or not, the Court will enforce the agreement. See *Chapman v. Gibson*, 3 B. C. C. 286; *Fielding v. Winwood*, 16 Ves. 90; but, beyond the mere adoption of this rule, equity is not influenced by the relative *quantum* of the provisions of the parties by and against whom its interposition is sought. It would be no bar to relief, therefore, that the plaintiff had a larger provision than the defendant. See 3 Atk. 191.

Whether performance can be enforced against the settlor himself.

It rarely happens that the performance of a covenant to make a voluntary settlement is attempted to be enforced against the covenantor himself; for this obvious reason, that the settlement, when executed under the compulsory mandate of the Court, might be immediately vacated, (unless sustained by a valuable consideration *ex post facto*), by means of a sale made by the settlor; though I cannot accede to the notion of the learned writer whose opinion has been lately cited, (Atherl. on Sett. 133), that this forms a ground for the refusal of the Court to decree performance. The objections to the doctrine are, 1st. That it is not to be presumed that the settlor will sell the property, for the purpose of defeating his settlement; 2ndly. That his power to do so may be prevented by an alienation for value by the volunteer, (*vide ante*, Vol. 8, p. 171); and, 3rdly. That the doctrine invests a voluntary covenant with a revocatory and posthumous character, which is foreign to its nature. It must be binding *ab initio*, or not at all. And these objections to the principle are not wholly unwarranted by decision; for the case of *Husband v. Pollard*, cit. 2 P. W. 167, is admitted to be an authority against it. The point, however, has too little of practical utility to invite a lengthened discussion.

How far the ob-

An extremely important question, affecting covenants in marriage set-



lements, is, whether performance can be enforced, while the stipulations of any other party, (being or not being the plaintiff in the suit), remain unperformed.

It is clear that the issue of the marriage may compel the execution of articles against any of the covenanting parties, notwithstanding the failure of performance by any other party; for, as was observed by Lord *Hardwicke* more than once, *Amb. 503, 2 Ves. sen. 503*, it is no reason, because they (the issue) have lost the benefit of the settlement to be made by or on behalf of one parent, that they should be deprived of the settlement of the other also. See also *2 Ves. sen. 309; 2 Sch. & Lef. 502*. And even where a bill was filed by the wife against the heir-at-law of the husband, to enforce the performance of an agreement to make a jointure, it was held to be no defence to her suit, to allege that the plaintiff's father had not paid her portion, according to his agreement; the Lord Chancellor (*Hardwicke*) observing, that the wife had entered into no covenant to pay; she married upon the faith and credit of the articles, and performed the only thing she was to perform by marrying, and ought to have the provision. *Perkins v. Thornton, Amb. 502*. See also *1 Ves. sen. 378*.

But, it is clear, in regard to marriage settlements, as to every other instrument, that a party cannot in equity enforce the execution of any covenant, without having performed, or being ready to perform, his own engagement with the person against whom this relief is sought. *Crofton v. Ormsby, 2 Sch. & Lef. 603*. And the Court would lay hold of the interest taken by a person whose obligations remained unperformed, for the purpose of making them good. *Priddy v. Rose, 3 Mer. 86*. See also *3 Atk. 611; 9 Ves. 96*.

And even where the covenants are not mutual, yet, if the settlement indicates an intention that the one act shall be conditional, and dependent on the other, the construction will be made accordingly; and on this principle, it is conceived, the case of *Pyke v. Pyke, 1 Ves. sen. 376*, may be reconciled with the class first noticed; for, in this case it was provided by the articles, that the wife's portion should remain in the hands of trustees, till a settlement was made of the husband's estate; and then it was to be applied in discharge of the incumbrances thereon; and the husband having died without making the settlement, and the same being rendered by his death impossible to be made, the surviving wife was held to be entitled to her portion, against the issue claiming to have it laid out upon the trusts of the settlement. Another ground upon which this decree may be supported is, the infancy of the wife when the articles were executed; but Lord *Hardwicke* did not rely upon or even advert to this circumstance.

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PERFORMANCE  
OF ARTICLES.

ligation of one party is affected by another's default.

Covenants held to be conditional.

ARTICLES, HOW  
CONSTRUED.4. *Rules of Construction applicable to Articles, and particularly in relation to the Question—Whether they are to be executed by Limitations in Strict Settlement?*

Articles not executed literally.

In preparing settlements in pursuance of marriage articles, the attention of the practitioner is necessarily drawn to the rules of construction applicable to these instruments, or, in other words, to the mode in which a Court of equity, in directing the execution of articles, would decree the settlement to be made; and here, an extensive field of inquiry is open, part of which, indeed, has been traversed by Mr. Fearne, with his usual acute discrimination and exhausting research; and the successful result of whose labours appears by the fact of the great diminution of cases involving questions of this nature, from the period of the publication of his incomparable Essay.

It is to be observed, that a Court of equity, in executing marriage articles, pursues a course somewhat similar to that of a conveyancer in preparing a settlement from the instructions of his client; not simply limiting estates in the exact terms employed by the parties to express their intention, but having, with the aid of the light afforded by the nature and occasion of the instrument, discovered that intention, the Court proceeds to frame a series of limitations the best calculated to carry it into effect.

Limitations to trustees to preserve contingent remainders.

In the same spirit, the Court, without any express authority from the articles, supplies all the technical and formal parts, as, by the insertion of a limitation in trust to preserve contingent remainders before every such remainder; of which nature, be it remembered, is every remainder to a person or persons not in *esse*, or not ascertained. See *Baskerville v. Baskerville*, 2 Atk. 279. So, having regard to the inconvenience of a joint tenancy among concurrent objects, equity will, without words of severance, make them tenants in common; thus requiring the same positive indication of intention in favour of a joint tenancy, which, under the general rule, is essential to the creation of a tenancy in common. *Taggart v. Taggart*, 1 Sch. & Lef. 84.

Tenancy in common.

Rules in regard to the limitation of estates tail.

But the great body of cases arising on the construction of marriage articles relates to the question, whether they are to be executed by the limitation of an estate tail to the marrying parties or either of them, or of estates for life only, with remainder in strict settlement to the issue, or some of the issue. Mr. Fearne's conclusion from all the authorities is—"that, in the case of articles before marriage, containing limitations that would give the parents, or either of them, such an estate tail as would enable the father alone during the coverture, or the surviving parent afterwards, to bar the issue of the marriage, under a legal settlement limiting the estate in the same words, equity will rectify it, and make a strict settlement, unless the issue is otherwise provided for than by the limitation to the heirs, &c., or, from other limitations or provisions in other lands, it appears that the parties knew and intended the distinction. But that the Court will not interfere, if both articles and settlement are made *before* marriage, unless the

Mr. Fearne's general conclusion from the cases.

settlement in that case be expressed to be made in pursuance of the articles; for the Court will suppose that the parties had altered their intention with respect to the terms of the marriage; which they may do before the marriage, though not afterwards: and that the settlement was made in pursuance of such new agreement, and not of the articles. But, when it is said to be made in pursuance of the articles, all room for such a supposition is precluded." Cont. Rem. 107.

ARTICLES, HOW  
CONSTRUED.

Applying, then, this general principle to particular cases, it is to be observed, that, when the intended husband contracts to settle his estate on himself for life, with remainder to the heirs of his body, the Court will decree a strict settlement; since the effect of adhering to the literal terms of the articles would be to place the estate immediately under the dominion of the settlor, and thus enable him to defeat his own act. And this, let it be observed, is done without any express declaration of an intention to preserve the estate for the issue, but merely on the supposition drawn from the occasion and general scope of marriage settlements. As, where A., the intended husband, covenanted with trustees to settle an estate to *the use of himself for life*, without impeachment of waste, remainder to his intended wife for life, *remainder to the use of the heirs males of his body* upon the body of his intended wife to be begotten, and the heirs males of such heirs males issuing, remainder to the right heirs of the said A. for ever; and covenanted, that, in case the said limitations were not thereafter well raised according to the intent of the said articles, he and his heirs would stand seised of the premises until a further assurance thereof should be made to the uses thereinbefore declared; and it appeared that A., (who had issue several sons by the marriage), supposing himself to be tenant in tail under the articles, levied a fine and settled the estate on his second son, against whom the eldest son, after A.'s death, filed the present bill, praying a specific execution of the articles; and the Lord Chancellor so decreed, observing, "that, upon articles, the case was stronger than upon a will; that articles were only minutes or heads of the agreement of the parties, and ought to be modelled, when they come to be carried into execution, as to make them effectual; that the intention was to give A. only an estate for life; that, if it had been otherwise, the settlement would have been vain and ineffectual, and it would have been in A.'s power, as soon as the articles were made, to have destroyed them; that the covenant to stand seised was, until such time as the said uses were well raised, according to the true intent and meaning of the articles; that, if a settlement had been made defective in any particular, it would not have been final or conclusive; that a second settlement must have been made, till the uses were well and duly raised." The decree directed a conveyance to be made to the plaintiff in tail male, and was affirmed in the House of Lords. *Trevor v. Trevor*, 1 Eq. Ca. Ab. 387, pl. 7.

Words which  
would create an  
estate tail, executed by limitations in strict settlement.

So, where A., before marriage, agreed by articles to settle lands to the

Strict settlement

ARTICLES, HOW  
CONSTRUED.

decreed, without any express intention to provide for the issue.

use of himself and his intended wife, for their lives and the life of the survivor, and afterwards to the use of the heirs of his body on the wife begotten; and, after the marriage, by settlement reciting the articles, conveyed the lands to the use of himself and his wife for their lives and the life of the survivor, remainder to the use of the heirs of his body on his wife to be begotten—Lord *Talbot* decided, that this was not a proper execution of the articles. He said, it could not be doubted but that, upon an application to the Court for carrying the articles into execution, it would have decreed it to be done in the strictest manner, and would never leave it in the husband's power to defeat and annul every thing he had been doing; and the nature of the provision was strong enough for that purpose, *without any express words*. *Streatfield v. Streatfield*, Forrest, 176.

Again, where, by articles it was agreed that the wife's portion should be laid out in the purchase of lands, which should be settled on the husband and wife for their lives and the life of the survivor, and after to the heirs of the body of the wife, by the husband to be begotten, the settlement was decreed to be made to the first and other sons, &c. *Jones v. Laughton*, 1 Eq. Ca. Abr. 392, pl. 2.

So, in a subsequent case, where it was agreed by marriage articles, that every thing which should come to the wife, by her father's death or otherwise, should go to the husband and wife for their respective lives, and, after the death of the survivor, to the heirs of the body of the wife by the husband begotten; Lord *Hardwicke* observed, that the rule of the Court, where articles of this kind were made, relating to real estate, was to decree a strict settlement. *Green v. Ekins*, 2 Atk. 473. See also *Warwick v. Warwick*, 3 Atk. 291. It is observable, that, in the two last cases, the wife, in the event of her surviving her husband, would have had an absolute power over the estate. The cases in question clearly overrule *Burton v. Hastings*, 1 Eq. Ca. Ab. 393; *Gilb. Eq. Rep.* 113.

Objection to the limitation of a joint estate tail to the husband and wife.

The same reasoning applies, and therefore the same rule is adopted, where the limitation prescribed by the articles is to the heirs of the bodies of both husband and wife, to whom estates for life have been previously limited; as this, being literally executed, would give them jointly an estate tail, which, devolving to either by survivorship, would, (unless in the particular case presently noticed), enable such survivor to unfetter the estate. Thus, in a case where the intended husband entered into a bond to surrender copyholds to the use of himself for life, remainder to his wife for life, remainder to the heirs of their two bodies, then to the heirs of the husband, the husband, on a bill filed to compel a conveyance according to the articles, was decreed to surrender to the use of himself for life, remainder to the use of his wife for life, remainder to the use of the first and other sons in tail general, successively, with remainder to the daughters in tail general. *Nandick v. Wilkes*, 1 Eq. Ca. Abr. 393, pl. 5; *Gilb. Eq. Rep.* 114. So, where the husband by articles covenanted, that, as well all the real estate that he had then in Ireland, as all the



lands and tenements which he should purchase during the life of his intended wife, should descend and come to the heirs male to be begotten on the body of the intended wife by him (the husband) (*a*), and should be secured and settled on the said heirs male, by the husband, as the counsel of the intended wife should advise: a son of the marriage was held to be entitled to be made tenant in tail by purchase under the articles, and to hold and enjoy the lands, against all persons claiming under a subsequent settlement by his father, who had levied fines and suffered recoveries to bar the supposed entail in himself. *Cusack v. Cusack*, 5 Bro. Parl. Cas. 116, Toml. ed.

ARTICLES, HOW  
CONSTRUED.

It will be observed, that, in all the preceding cases, the settled estate might, in event, have fallen within the power of *one* of the parents. This, indeed, would be the *inevitable* consequence in those instances in which the limitations prescribed by the articles would have made them joint tenants in tail; since, by virtue of the right of survivorship, which is incidental to a joint tenancy, *either* becoming the survivor might, by means of a common recovery, have acquired the fee-simple; but, where the limitations would have vested an estate tail in *one* only of the parents, this effect would depend upon the contingency of that parent happening to become the survivor; however, the mere possibility of such an event affords, in the latter instance, an equally valid ground for not framing the settlement in conformity to the literal construction of the articles, as the certainty of it in the former.

Remarks on the  
cases.

If the estate could not, in any possible event, become alienable by *either* parent, singly and alone, the reason for departing from the language of the articles fails, and the limitations are then framed in exact consistency therewith. Such is the result when the estate articted to be settled proceeds from the husband or his ancestors, and the limitations to be inserted in the settlement would make the wife sole tenant in tail; for then, the husband being the survivor, would be merely tenant for life, and the wife being the survivor, would be restrained by the stat. 11 Hen. 7, c. 20, (stated *post*), from alienating the estate, as being derived *ex provisione viri*; and therefore, the estate is in every event effectually taken out of the dominion of either parent singly. Thus, where by articles previous to marriage it was agreed to purchase lands, (out of funds, it should seem, proceeding from the husband), and settle them to the use of the husband for life, then of the wife for life, remainder to the use of the heirs of her body by him, remainder to the use of the heirs of the survivor. They purchased and joined in a recovery to the use of a mortgagee in fee. Upon a bill by the eldest son, after the death of his mother, insisting that he was entitled, on the construction of these articles in equity,

Rule where the  
junction of both  
parents would  
be necessary to  
unfetter the es-  
tate.

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(*a*) That these words create an estate tail in both parents, see *Denn v. Gillott*, 2 Durn. & E. 431.

ARTICLES, HOW  
CONSTRUED.

to have the estate settled to the first, &c., son in tail-male; Sir *Joseph Jekyll* said, that, if this had been a common limitation, he should have thought what the defendant insisted on was right, and that the mortgagee must have lost his estate; but that this was particular, to the heirs of the body of the wife by the husband, and, being *ex provisione viri*, would secure the children against the father alone; and that it might be the real intent that both might bar, comparing it to a power of revocation both by father and mother; and that the defendant was therefore barred. *Whately v. Kemp*, 17th Feb. 1734, cited 2 Vez. sen. 358. See also *Green v. Ekins*, 2 Atk. 473.

Limitations executed literally, because the estate could not become disposable by either parent.

So, in another case, where, by marriage articles, the intended husband covenanted to surrender copyholds to the use of himself for life, remainder to his intended wife for life, and, after the deceases of both, to the use of the heirs of her body by him, if he survived her, but, if she survived him, to the heirs of his body on her body to be begotten, remainder to his own right heirs; the husband surrendered the lands to the uses mentioned in the articles, and was admitted accordingly; he and his wife surrendered to certain uses. The present bill was filed by the eldest surviving son of the marriage, claiming under the articles, against the defendants, claiming through the surrender by the husband and wife; which raised the question, whether the first surrender by the husband was a due execution of the articles. Lord *Alvanley*, then M. R., said, that the rule had been settled and adhered to in many cases; that articles for a settlement on a husband and the heirs of his body, should be carried into execution as a strict settlement; and it had been considered as vain to make a settlement which instantly might be defeated by a recovery; but the doctrine had never gone so far, where that party could not suffer a recovery alone. He observed, that it was anciently a common mode of settlement to the husband for life, to the wife for life, and to the heirs of the body of the wife by the husband; it was thought a sufficient precaution to preserve the entail, that it could not be destroyed unless both husband and wife concurred. With respect to the case before him, the limitations appeared to be anxiously worded; the concurrence of both parties was necessary to destroy the entail; it was out of the power of the survivor. He thought that he had no authority to say that this was not what the parties meant. *Highway v. Banner*, 1 Bro. Ch. Cas. 584.

Rule as to personality.

Where the settlement is of personality only, without any direction for laying it out in land, the ground is not considered to be equally strong for departing from the literal construction, as the effect of such departure would merely be to give the property absolutely to the first son; but it should be observed, that, in the case of *Green v. Ekins*, 2 Atk. 473, where this doctrine was acted on, Lord *Hardwicke* was evidently biassed in favour of the strict construction, by the circumstance that the parents, at whose disposal it placed the property, consented to its being settled on

the younger children, the eldest being very liberally provided for. The reason for the distinction is certainly far from being satisfactory; for surely it is better to give the property to the eldest son, than to vest it absolutely in one of the parents, possibly himself the settlor.

ARTICLES, HOW  
CONSTRUED.

In all the instances just treated of, in which the Court rectified the settlement by the articles, the marriage, intervening between the articles and the settlement, had unalterably fixed the interests of the persons deriving title under the former. If the *settlement* as well as the articles had *preceded* the marriage, it would have been competent to the parties to vary the limitations in any manner they deemed proper. In such a case, therefore, no ground exists for the interference of the Court to correct the settlement, unless it distinctly appears that the parties intended to follow the articles; which intention would be sufficiently demonstrated by its being expressed that the settlement was made in pursuance or in performance of the articles. In all other cases, the fair presumption is, that the alteration in the limitations has sprung from a change of intention, which change, so long as the consideration remained unexecuted, they were at liberty to make, as well in respect of their own personal interests as the interests of others on whose behalf they had respectively contracted. *Legg v. Goldwire*, Forrest, 20; *Honor v. Honor*, 1 P. W. 123; *S. C.* 2 Vern. 658; *West v. Errisey*, 2 P. W. 349; 3 B. P. C. 327; Fea. C. R. 100. As to the distinctions between this case and *Price v. Price*, 2 P. W. 535, *vide* Fea. C. R. 101.

Principle where  
the settlement  
in pursuance of  
the articles is  
before marriage.

And even where the settlement is post-nuptial, the immutability of character which the marriage impresses on the limitations directed by the articles, applies only to those who are not personally competent to vary them by the settlement; as, for instance, the issue of the marriage, who are either not in *esse* or not adult, or the wife, who is under coverture, assuming the property not to be settled to her separate use. Any person free from disability may modify his interest by the acceptance of an estate less than or different from that which the articles prescribe, provided the difference be not made at the expense or to the prejudice of any non-concurring party. As, if it were agreed by articles, before marriage, that an estate of the wife should be conveyed in fee to the husband, who, by the settlement after marriage, directs the conveyance to be made to the relations of the wife, the heir of the husband could not, at any future period, claim to have the settlement rectified by the articles. Thus, where, by marriage articles, A. (the intended husband) covenanted to settle his estate on his intended wife and the issue of the marriage, *remainder to the heirs of his own body*, and, by a settlement after marriage, in which the articles were recited, and which was expressed to be made in pursuance of the articles, instead of limiting the remainder to the heirs of the body of A., it was limited to his issue by any subsequent marriage, with power to jointure. A creditor filed the present bill, to have the settlement rectified in conformity to the articles; but Lord Hardwicke dis-

Persons free  
from disability  
may vary their  
own interests by  
a post-nuptial  
settlement.

ARTICLES, HOW  
CONSTRUED.

missed it, observing, that, where the parties to the settlement were adult, and it differed from the articles, this Court could not alter the settlement, *except where it was said and intended to be in pursuance of the articles.* Here was no mistake, but the variation was to be presumed to be made with design; and his Lordship thought that this was rendered stronger by an act of Parliament which had been obtained for the sale of the estates. *Partyn v. Roberts*, Amb. 315.

Remark on  
*Partyn v. Roberts*.

As the settlement was expressed to be made in pursuance of the articles, the decision and the doctrine of it may seem to clash: the latter appears to be the safer guide. To prevent the occurrence of any such question, the intention to vary the limitations should always be notified by recital.

POWERS IN  
SETTLEMENTS  
UNDER EXECU-  
TORY TRUSTS.5. *What Powers are authorized to be inserted in Settlements made in pursuance of Executory Trusts.*General obser-  
vations.

To determine what powers are proper to be inserted in settlements made under executory trusts, whether created by marriage articles, will, or any other instrument, is a point of great practical importance, not only as directing the course of the draftsman in preparing such settlements, but also in relation to the interests of persons strangers to the instrument, which are incidentally involved in the validity of the powers. Thus, the propriety of inserting a power of sale frequently comes into discussion on an objection raised by a purchaser to a title derived under such a power; for, having notice that the settlement was made in execution of an executory trust, he is bound to ascertain that it warranted the insertion of the power. A purchaser without notice, of course, might safely repose under his legal title; and for this reason, in framing a settlement in which the authority to insert a power of sale is doubtful, it is sometimes expedient not to disclose the executory trust in pursuance of which the settlement is made.

Power of sale  
and exchange.

It seems to be the better opinion, that a power of sale and exchange is not authorized by an executory trust directing a conveyance to certain limitations, but which is wholly silent as to the insertion of powers of any kind. Thus, in the case of *Wheate v. Hall*, 17 Ves. 80, where a purchaser resisted a bill for specific performance, on the ground that a power of sale and exchange had been improperly introduced into a settlement made under the direction of the Court, in execution of a testamentary trust directing a conveyance to a series of limitations in strict settlement, but without any mention of powers; Sir *W. Grant*, M. R., after shewing that the Master's approval of the deed of settlement involved no judicial sanction of its propriety, since, unless some exception were taken to the draft, the nature of the limitations would not be brought to the attention of the Court, proceeded to observe, in regard to the power—"It is difficult to say it was authorized by the will, unless it is to be implied,



and therefore ought to be inserted, in every executory trust; the will being entirely silent upon the subject. No great stress, perhaps, can be laid upon the direction to secure the estate to the successive devisees, as indicating an intention to exclude a power of sale; but, in the absence of any expression from which the intention to include such power can be inferred, I am not aware that it was ever decided that the introduction of such a power, under such circumstances, is of course; nor have I learned that it is the practice to insert a power of sale in executing such a trust, where the will is entirely silent. I therefore cannot think a purchaser ought to be compelled to take a title depending upon the validity of such a power." *Wheate v. Hall*, 17 Ves. 85.

POWERS IN  
SETTLEMENTS  
UNDER EXECU-  
TORY TRUSTS.

Mr. Chance, in his Treatise on Powers, Vol. 1, p. 96, truly states that this case does not decide that the power was not proper to be inserted. It is nearly equivalent, however, in practical effect; for, unless the power enables the donees to make a title, which is negatived by the decision in question, it seems to be of little value. And it is observable, that the terms in which Lord *Eldon* referred to the case, in *Brewster v. Angel*, 1 Jac. & Walk. 628, shew that he considered it as an adjudication against the insertion of the power, and they also indicate his Lordship's opinion, that the point was one of difficulty. His anxious avoidance of the question, whether the Master of the Rolls "was right or wrong," may be thought, considering his Lordship's habit, to be rather symptomatic of dissatisfaction.

Remarks upon  
*Wheate v. Hall*.

But, where marriage articles direct that the settlement shall contain all usual powers, a power of sale and exchange will, (unless in some special cases presently noticed), be included. Thus, in *Peake v. Penlington*, 2 Ves. & Bea. 311, the articles provided, that in the settlement should be contained a power for the husband and wife, and the survivor of them, to appoint new trustees; and also, all such other powers and provisoes for effectuating the intentions of the said parties, usually contained in settlements of the like nature, as should be approved of by the trustees, or the survivor of them, his heirs, executors, administrators, or assigns. Lord *Eldon* observed, that powers of selling, exchanging, and investing in new purchases, are usual in settlements, and therefore, powers of sale and exchange came within the meaning of this clause, and ought to be inserted in the settlement.

Powers of sale  
and exchange  
warranted by a  
direction to in-  
sert usual pow-  
ers.

However, the fact that the powers to be inserted in the settlement are exempt from those checks which it is usual to impose on the exercise of a power of sale, may form a ground for its exclusion, even under a clause authorizing the insertion of all usual powers. Thus, in *Brewster v. Angel*, 1 Jac. & Walk. 625, estates were devised to trustees, in trust for the testator's children for their lives, with remainders to their issue in tail. And the testator, after directing his trustees to make a settlement of his estate accordingly, and that the share of each of his two daughters, A. W., and M. W. Smith, should be for her separate use, with a power of

Unless the pow-  
ers are exempt  
from due re-  
straints.

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SETTLEMENTS  
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TORY TRUSTS.

appointment amongst her issue, directed, that in such settlement there should be inserted *all proper powers and authorities for making leases, and otherwise*, according to circumstances, to and for the tenants for life, to be exercised by them at such times as they should be by law qualified so to do, *and the same powers and authorities to be exercised on their behalf by the trustees, their heirs and successors, whenever such tenants for life respectively should be disabled or disqualified by law to act freely and of their own uncontrolled authority in said premises*; and that provisions should also be made in such settlement for the appointment of new executors, trustees, and guardians, in the like manner as the testator had directed respecting his personal estate, alluding to another will disposing of his personalty. A settlement was made under the direction of the Court of Chancery, in which was contained a power to the trustees under the will, and the survivors, &c., with the consent of the tenants for life, and, after their decease, of the persons for the time being entitled to the rents, being of the age of twenty-one, and if there should be no such person, then of the proper authority of the trustees, to sell, exchange, and make partition of the estates. The estate was sold under the power, and the purchaser objected to the title. Lord Eldon said—"The question is, whether a power given to trustees to sell, with the approbation of the tenants for life, which he could not give if he were disqualified, is such a power as is authorized to be put into this settlement. Now, what are the words of the will? They are, 'all proper powers for making leases, and otherwise, according to circumstances, &c.;' whatever, then, is the meaning of the words 'and otherwise, according to circumstances,' they are to be powers and authorities 'to the tenants for life, to be exercised, &c.' Supposing that a power of sale and exchange could be given under these words, it is, according to the common sense of them, to be given to the tenants for life, and, in case they are disqualified, to the trustees; but this is a power to act with the approbation of the tenant for life, qualified or not. The inclination of my opinion is, that this is not a proper power; but I am quite clear, that I cannot compel a purchaser to take a title depending on it. The question to be decided is, not whether a power of selling and exchanging might not have been given to the tenants for life, if qualified to act, and, if not qualified, to the trustees; but, whether such a power can be given to the trustees acting with their approbation, should they be or be not qualified (a)." A bill was afterwards

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(a) His Lordship, therefore, seems to have thought, that the words referring to disqualification were not satisfied by being applied to infancy. The introduction into articles of such ambiguous expressions is greatly to be deprecated, as rendering an appeal to judicial opinion almost inevitable, and which, when obtained, amounts to little more than authoritative conjecture.

filed to correct the settlement, *Horne v. Barton*, 1 Jac. 437; when Sir T. Plumer, M. R., observed—"If the power of sale and exchange is to be given to the tenant for life, without check or control, I cannot say that it is a proper power; on the contrary, it may be very dangerous, as the tenant for life may, for many reasons, be induced to sell when it may not be for the benefit of the remainder-man; nor is it usual to give him this power, without the check of requiring the assent of the trustees. Take it the other way: if the tenant for life is disqualified by infancy or by marriage, (if the testator intended marriage to be a disqualification), can the Court say that it is a power proper to be given exclusively to the trustees? It comes to this question, whether the testator, at the time of making his will, intended to give to each party, the tenants for life and the trustees, in different events, separately and substantively a power to sell? I think the word 'proper' cannot be satisfied by that; and it is not enough to say that the power is proper now; we must consider it as it stood at the date of the will."

POWERS IN  
SETTLEMENTS  
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TORY TRUSTS.

Nevertheless, very slight expressions have been held, in some instances, to warrant the insertion of a power of sale and exchange in a settlement under articles. Thus, in the case of *Williams v. Carter*, in Chancery, 8th May, 1818, stated Sugd. on Powers, 5th ed. 751, where, on the marriage of A. and B., the expectant share of B., (the intended wife), in the sum of 5000*l.* was assigned to trustees, upon trust to invest the same in real or Government securities, and to stand possessed thereof upon the trusts therein mentioned for A. and B. and their issue; and the trustees were empowered, with the consent of A. and B., or the survivor, to change such stocks, funds, or securities for others of the same or the like nature, as often as should be thought expedient. And by the same indenture, A. covenanted with the trustees, that if, during the coverture, any real estate should become vested in B., or in the said A. in her right, the same should be settled and assured upon and for the same trusts and purposes, and subject to the same powers, provisoes, and declarations as thereinbefore expressed and declared concerning the said stocks, funds, and securities, or as near thereto as the nature of real estate would admit of. On a bill filed by the trustees, praying that an undivided third in certain real estate, to which B. had succeeded during the coverture, might be conveyed according to the indenture of settlement, the Court decreed accordingly, and that the settlement to be made in pursuance of that covenant ought to contain powers of sale and exchange by the trustees, with such consent as is required for changing the securities wherein the share in the 5000*l.* mentioned in the settlement was invested.

Powers of sale and exchange warranted by slight expressions.

As a power of granting leases for twenty-one years is essential to the beneficial management of property, especially of lands, its introduction probably would be deemed a matter of course; see Fea. Posth. Works, 390; but the point is less clear as to building leases. *Pearse v.*

Powers of leasing.

POWERS IN  
SETTLEMENTS  
UNDER EXECU-  
TORY TRUSTS.

Power to join in  
a partition.

*Expressio unius  
est exclusio alle-  
rius.*

Two powers of  
the same nature  
held to be au-  
thorized.

*Baron, Jacob, 158.* It is observable, that even in the case of an executory trust, a power of leasing has been implied from a mere direction to pay an annual sum out of the yearly *rents* and profits. *Naylor v. Arnitt*, 1 Russ. & My. 501.

Where the settlement comprises an undivided share in lands, a power of partition seems to stand on grounds equally favourable with a power of leasing, as facilitating a measure generally beneficial to all parties, and which, whether beneficial or not, the co-owners have a right to enforce. See 1 Chance, Pow. 101.

*Expressio unius est exclusio alterius*, is a principle applicable to the point of construction under consideration; and therefore, where a qualified power of leasing or sale is directed to be inserted, a more extensive or indefinite power of the same nature may not be warranted even by a direction to insert usual clauses, which otherwise would have been construed as authorizing the insertion of a power of this larger extent. Thus, in the case of *Pearse v. Baron, Jac, 158*, it was stipulated by articles, previously to the marriage of a female infant, that a settlement of certain real estate should be executed, which was to contain a power of leasing for twenty-one years in possession, a power of sale and exchange, of appointing new trustees, and all such other powers, provisoes, clauses, covenants, and agreements, as are usually inserted in settlements of the like nature. The lady having attained twenty-one, the settlement was about to be executed, and a petition was now presented, praying a reference, to inquire whether it would be for the benefit of the parties that a power should be inserted for granting building leases, the situation being favourable for building. But Sir *T. Plumer, M. R.*, refused the prayer of the petition, observing, that the general words were of no effect as opposed to the mention of a particular term of years for which there was to be a power of granting leases; and that the altered circumstances of the property could not be taken into consideration.

But two powers of the same kind, the one limited, and the other general, if not absolutely inconsistent, may be inserted, provided such clearly appears to be the intention of the author of the executory trust. Thus, where a testator having, by will, devised all his estates to the use of trustees, upon trust to convey the same to his son and his issue, in strict settlement, with remainder to testator's nephew and his issue, by a codicil ordered that a clause should be inserted in the conveyance directed by his will, enabling the trustees, at the request of his said son, to sell and convey his estate at Slyne to his nephew and his heirs, discharged from the entails, on his agreeing to assume the testator's name. By a second codicil, the testator declared that the settlement by his will directed to be made should contain usual powers to the trustees, with the consent of the tenants for life, and guardians of infant tenants in tail in possession, during the minority of such tenants in tail, to sell and exchange all or any



part of the estates devised by the will, and other reasonable clauses. It was contended, that the special power was revoked by the general one; but the Court decided, that the two powers were not incompatible, and that the settlement must contain both. Sir *T. Plumer*, M. R., observed—“The latter power is very different from the former, for it is not to be exercised merely at the request of the son, but of any tenant for life, and by the guardian of a tenant in tail. There is no inconsistency in saying, that, as to the *Slyne* property, there should be a special power of sale, to be exercised by the son in favour of *Bradley*, the nephew, which, as to both, would cease with the life of either of these individuals; for there is nothing to carry it beyond that period. The object of the power was the supposed personal attachment of *Bradley*, and the supposed disinclination of the testator's son, to the estate at *Slyne*. But, notwithstanding that power, it might be necessary that there should also be a general power of sale or exchange; for the first was limited to a sale by the son to the nephew (*a*). I do not see any such incompatibility as will enable the Court to reject either the one or the other of the powers. If the nephew should decline to purchase, there would be an end of the power given by the first codicil. Any difficulties which might arise in the execution of the power, do not furnish an objection to its insertion in the settlement. The execution of a power of sale may frequently be attended with considerable difficulties, as, when it is only to be exercised during the lives or with the consent of particular individuals. The proper construction upon the whole of the three instruments appears to me to be, that the settlement should contain a general power affecting all the estates, and also a special power to sell the *Slyne* estate. *Greene v. Wiglesworth*, 1 J. Wils. 312.

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UNDER EXECU-  
TORY TRUSTS.

What has been already advanced, it will be observed, relates only to powers which concern the management of the estate, and its conversion, or rather the substitution of another estate for it, without varying the relative interests of the equitable owners. Powers which affect the destination of the beneficial property, as, powers of jointuring and charging portions, require a more explicit disclosure of intention; for, the Court has no *data* by which to regulate the *quantum* of interest to be placed at the disposal of the donees; and hence it follows, that even an express direction to insert such powers, not explanatory in these particulars, would be difficult if not impossible to be executed. At all events, it is clear, that a general direction to insert usual clauses and powers does not embrace powers of this description.

Powers of jointuring and charging portions.

Thus, where a testator by his will directed a conveyance to be made by his trustees of his real estate, on his nephews and their sons successively, in strict settlement, and that there should be a power for the ne-

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(a) True, the first power was not so extensive as the second power; but, was it not included in the latter?

POWERS IN  
SETTLEMENTS  
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TORY TRUSTS.

phews, when in the actual possession, to charge the estate, by way of jointure to a wife, with certain annual sums; and his will was, that there should be contained a power to the trustees to sell and exchange, and also a power to the persons entitled beneficially and his trustees to lease; and that there should also be contained in such settlement all other clauses, powers, and provisions as are usually inserted in settlements or deeds of that kind—Sir *J. Leach*, V. C., held, that the will did not authorize a power to appoint portions to younger children, because the effect of such a power would be to diminish the estate, which was expressly limited in strict settlement, and because there was no certain rule as to the *quantum* of such portions, by which the Court could be guided. His Honor considered the words as referring to usual and necessary powers of management. *Higginson v. Barnsby*, 2 Sim. & Stu. 516.



IN DEROGATION  
OF MARITAL  
RIGHTS.

Secret settle-  
ment pending  
courtship, void  
against the in-  
tended husband.

V. FRAUDS ON THE MARRIAGE CONTRACT.

1. *Settlements in Derogation of Marital Rights.*

If a woman, pending a marriage treaty, without the knowledge of her intended husband, makes a voluntary settlement of her property, which will have the effect of excluding or curtailing his marital interest, the act is so egregiously contrary to good faith, that the plainest principles of equity require that it should be vacated; and such, it will be seen, is the settled doctrine of the Courts. Thus, in the case of *Howard v. Hooker*, 2 Ch. Rep. 81; *S. C.* 1 Eq. Ca. Ab. 59, pl. 1, where a woman, previously to her second marriage, assigned to trustees a sum of money which she was entitled to under a conveyance of the estate of her deceased husband, in trust for her sole use during the joint lives of herself and her intended husband, and that she should have power to dispose thereof for the benefit of her daughter by her former husband, the Court set aside the deed as a fraud on the husband, who, it appeared, did not know of its execution, and had made a jointure settlement on the wife, in the expectation that he was to have the fortune which she derived under her first husband.

So, in *Carlton v. Earl of Dorset*, 2 Vern. 17; *S. C.* 1 Eq. Ca. Ab. 59, pl. 3, a settlement, by which the intended wife had conveyed the rents of her estate for her separate use, was set aside at the instance of the husband, without whose privity it was made.

Again, in *Strathmore v. Bowes*, 1 Ves. jun. 28, Lord *Thurlow* laid it down, that—"If a woman, during the course of a treaty of marriage with her, make, without notice to the intended husband, a conveyance of any part of her property, I should set it aside, though *prima facie* good, because affected with that fraud." So, in the case of *Ball v. Montgomery*, 2 Ves. jun. 194, Lord *Loughborough* said, that if a woman, previously to marriage, conveyed her property without the privity of the intended husband, it would be fraud.

In none of the preceding cases did it distinctly appear whether the husband was apprised of the existence of the property, from which the wife's secret act had excluded him; and, upon principle, it was questionable whether the doctrine would extend to such a case; but a subsequent decision of Lord *Gifford*, when Master of the Rolls, has supplied an answer to this question; for, he vacated a settlement made by a woman ten months before her marriage, on the ground of its being made after her acquaintance with, but without the knowledge of, her intended husband. The settled property consisted of two sums of 500*l.* and 400*l.*, which the wife vested in a trustee, for her separate use; and the husband, after the death of the wife, preferred a bill, for the purpose of setting aside the settlement, alleging that he was not aware of it, *or of the property to which it related*; and the Court decreed accordingly. *Goddard v. Snow*, 1 Russ. 483.

IN DEROGATION  
OF MARITAL  
RIGHTS.

Rule where the property is unknown to the intended husband.

It is singular, that though Lord *Gifford* took an extended survey of the authorities, he treats this case as standing upon general grounds, without advertg to the circumstance of the husband's ignorance of the existence of the property, which constituted its great peculiarity, and furnished at least a *prima facie* ground for taking it out of the principle; and this omission is the more to be regretted, because his Lordship's decision directly clashes with an early authority, of the existence of which it is to be presumed his Lordship was not aware, as he takes no notice of it. The case alluded to is *Thomas v. Williams*, Mosely, 177, where a release by the intended wife to her brother, of a legacy bequeathed to her by their father, and charged on estates devised to the brother, though made while she was receiving the addresses, and without the knowledge of the intended husband, was held to be good; the Lord Chancellor observing, *that it did not appear that the husband ever inquired after this legacy*.

Remarks upon  
*Goddard v.*  
*Snow*.

Another instance in which a settlement of this nature was maintained, is *Hunt v. Matthews*, 1 Vern. 408, where a widow, before her second marriage, assigned the greater part of her estate as a provision for her children by her first husband. The second husband having got the deed into his possession, suppressed it, and now insisted that the deed, having been made a little before the marriage, was fraudulent. But the Court thought that the widow might with a good conscience, before she placed herself under the power of a second husband, provide for the children she had by the first.

Settlement by a widow in favour of her children, protected.

The alleged ground for sustaining the settlement in *Hunt v. Matthews* is clearly untenable; for, if the settlement were a fraud on the husband, it would be vain to urge in its defence, that the object of it, abstractedly considered, was proper; for persons must be just before they are generous: and it is no answer to the complaint of a man who has been defrauded, to say, that the proceeds of the fraud have been meritoriously applied. Without forgetting, therefore, the particular tenderness shewn to settlements made by a widow about to marry, in favour of the chil-

Remarks upon  
*Hunt v. Mat-*  
*thews*.

IN DEROGATION  
OF MARITAL  
RIGHTS.

Recognizance  
without consi-  
deration, and  
without the  
knowledge of  
the intended  
husband, va-  
cated.

Conveyances  
before courtship  
not within the  
rule.

Case of Countess  
of Strathmore v.  
Bowes.

dren of her former marriage, (which has extended even to protect them against purchasers under the stat. of 27th of Elizabeth, *Newstead v. Searles*; 1 Atk. 265), it is impossible to assent to the doctrine in question, especially as it is encountered by one at least of the cases already stated, (*vide Howard v. Hooker*, ante, p. 62), in which the settlement, though in favour of a child, was vacated. The Editor is pleased to find, that, in regard to this point, he concurs with a respectable author, from whose conclusions he has more than once felt himself called upon to express his dissent. See 1 Rop. Husb. & Wife, 163.

The principle in question of course applies to an incumbrance or obligation created by the intended wife, either without consideration, or for the benefit of a person consant of the fraud. Thus, where a lady, the day before her marriage, without the knowledge of her intended husband, gave to her brother a recognizance for 2000*l.*, intending it as a gift to him, the Court of Chancery set it aside. *Lance v. Norman*, 2 Ch. Rep. 79. See also, *King v. Cotton*, 2 P. W. 360.

If the anti-marital conveyance or obligation were made before any treaty of marriage existed, of course it could not be impeached. (See *Cotton v. King*, 2 P. W. 606, which seems to overrule *Edmonds v. Dennington*, 1 Eq. Ca. Ab. 59; *S. C.* 2 Vern. 17). And even if the transaction took place under circumstances which would make it a fraud upon the person whose addresses were then received as the intended husband, it does not follow that it would be fraudulent as to another with whom a marriage treaty was subsequently commenced, and which terminated in his becoming the husband. Such appears to have been the opinion of Lord *Thurlow*, in the notorious case of *Lady Strathmore and Bowes*, 1 Ves. jun. 22, though the point did not arise, as the settlement in question was executed with the knowledge of the gentleman with whom the marriage treaty was then pending. The circumstances of this case were singular: Lady Strathmore, being seised and possessed of great property, both real and personal, pending a marriage treaty with Mr. Grey, *with his approbation*, conveyed and assigned all her real and personal estate to trustees, for her separate use. A few days afterwards, hearing that Mr. Bowes had fought a duel on her account with the editor of a newspaper, who had traduced her character, (but which, it seems, was an artifice of Bowes, the pretended duel never having taken place), she determined to marry him, and the marriage took place the next day. Bowes had no notice of the settlement, and now filed a bill to set it aside, as being in derogation of his marital rights. Lord *Thurlow* said—"Even if there had been a fraud upon Grey, I would not have permitted Bowes to come here to complain of it. But there was no fraud even upon Grey; for it was with his consent; and so I cannot distinguish it from a good limitation to her separate use. Being about to marry Grey, she made this settlement with his knowledge; and the imputation of fraud is, that, having suddenly changed her mind, and married Mr. Bowes, in the hurry of



that improvident transaction she did not communicate it to him; but there was no time, and could be no fraud, which consists of a number of circumstances. It is impossible for a man, marrying in the manner Bowes did, to come into equity and talk of fraud."

IN DEROGATION  
OF MARITAL  
RIGHTS.

It may appear superfluous, in conclusion, to suggest the propriety, *in every case*, of obtaining the positive assent of the intended husband to any deed by which his rights are liable to be affected; and, if the deed is executed in expressed contemplation of the intended marriage, he ought to be made a concurring party.

Concluding sug-  
gestion.

2. *Effect of Agreements between some of the Parties themselves, and Representations by third Persons, contrary to the good Faith of the Marriage Treaty.*

PRIVATE  
AGREEMENTS  
AND FALSE  
REPRESENTA-  
TIONS.

If any of the parties to a marriage settlement secretly make an agreement varying or rescinding any of its provisions, such private agreement is treated by a Court of equity as fraudulent and void. Thus, in the case of *Peyton v. Bladwell*, 1 Vern. 240, where, upon A.'s marriage, it was agreed (amongst other things) that B. should settle an estate of 100*l.* a-year upon himself for life, with remainder to A. in fee. B. afterwards prevailed upon A., by a promise of leaving him a greater estate by his will, (without the privity of the other parties to the marriage treaty), to release B. from settling that estate. Upon a bill brought by A. and his wife's relations, to set aside this secret release and to have the estate settled, it was strongly urged, on behalf of the defendant, that the release was good; for, as A. might have sold or given away the lands, he might well release the agreement for settling them; and that no one could be said to be injured by it, more than they would have been if he had devised away or sold the lands. The Court, however, declared its detestation of such underhand agreements, and that it was a fraud upon the wife's uncle, who had given a large portion with his niece, in expectation of an adequate settlement, which by that means would be frustrated; and therefore adjudged the release to be void, and the agreement to be performed as to the 100*l. per annum.*

Private agree-  
ment in fraud of  
settlement, void.

Secret release  
of covenant in a  
marriage settle-  
ment set aside.

But equity will remain neuter, if the effect of its interference would be to maintain one marriage agreement at the expense of another. Thus, where a power was reserved to A., (who was a widower), in his son's marriage settlement, to settle a jointure of 200*l.* a-year upon any future wife the father might marry, paying to the son the sum of 1000*l.* The father afterwards entered into a treaty of marriage with a lady who had a fortune of 3000*l.*, and proposed to settle upon her the jointure of 200*l.* a-year; but she, finding that he could not do so without paying 1000*l.* to the son, would not consent to the marriage. To remove this obstacle, the son, without the knowledge, it should seem, of his wife or her relations, released his father from the payment of it, but previously ob-

Interference of  
equity neutral-  
ized by conflict-  
ing claims.

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AGREEMENTS  
AND FALSE  
REPRESENTA-  
TIONS.

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tained from the father a bond for the 1000*l.*, which bond the father gave without the knowledge of his intended wife. The father's marriage afterwards took effect, and he and his wife now filed a bill to be relieved against the bond for the 1000*l.* Sir *J. Jekyl*, M. R., said, it was most true that equity abhorred all underhand agreements in cases of marriage; and perhaps this might be the only instance in equity, where a person, though *particeps criminis*, should yet be allowed to avoid his own acts. But his Honor observed, that whatever arguments could be made use of in favour of the father's wife, or of the father himself, to prove that he ought to be discharged from the payment of the 1000*l.*, the very same arguments might be urged in favour of the son and his wife, to prove that it ought to be paid. Thus, supposing it to be a hardship upon the father's wife, that he should be forced to pay the 1000*l.*, in breach of the public and open agreement made by the son; was it not equally a hardship upon the son's wife, and as much a violation of the open and fair agreement made upon her marriage, that the 1000*l.* should not be paid on the father's making a second jointure? The consequence of which would be, that as the agreement on the son's marriage was first, it ought to have the preference—*qui prior est tempore potior est jure*. On these grounds, the Master of the Rolls dismissed the bill. *Roberts v. Roberts*, 3 P. W. 56.

Private agree-  
ment to return  
portion, vacat-  
ed.

An agreement privately entered into by the husband, to return his wife's portion, evidently comes within the principle of the doctrine in question. Thus, where the intended husband gave a bond to the father of the lady to return 1000*l.*, part of the portion, without the privity of his mother, who had surrendered part of her jointure, in order to enable the son to make the settlement, the bond was decreed to be delivered up, as a fraud on the marriage agreement, though it had been assigned by the obligee to a creditor, who had no notice of the fraud. *Turton v. Benson*, Pre. Ch. 522; *S. C.* 2 Vern. 764; see also 1 Salk. 156.

In another instance, a secret agreement by the intended husband with his father, to release part of a provision made for him and his wife, for present maintenance, was set aside, though it was alleged that the son gave nothing but his own, as he might dispose of his present maintenance as he thought fit. *Butler v. Chauncey*, 1 Eq. Ca. Ab. 88, (E.), pl. 3:

So, in a more recent case, the father of the husband having settled upon the intended wife an annuity of 400*l.*, after the decease of the husband, a bond contemporaneously and secretly given by the son to his father, indemnifying him against this annuity, was declared void, and decreed to be given up to the executors of the son. *Palmer v. Neave*, 11 Ves. 165.

In another case, illustrative of the principle, equity relieved the representatives of the husband against a covenant with his mother to pay her 10*l.* a-year, in addition to what she ostensibly received under the set-

tlement as a consideration for her giving up her jointure. *Lamlee v. Hannam*, 2 Vern. 499.

It will be observed, that, in the application of the doctrine in question, relief is not withheld from a person, on the ground of his having been *particeps criminis* in the fraudulent transaction of which he complains; in which respect, the learned reader will perceive its coincidence with the principle applied to agreements infringing a general composition arrangement between debtor and creditors, discussed in a preceding volume. (*Vide ante*, Vol. 8, p. 435).

It is not necessary, in order to bring an agreement within the vacating principle, that either the husband or wife should be deceived; an agreement made with the concurrence of both may be fraudulent, as imposing on any other party to the settlement. Thus, on a bill filed by the father of the husband, to be relieved against a bond for the payment of an annuity of 150*l.*, on the ground of a private agreement entered into with the husband and wife, that 100*l.* only should be paid, Sir J. Strange, M. R., refused relief, on the ground that the agreement was made without the privity of the lady's uncle, one of the obligees, who stood *in loco parentis*, though it appeared that he gave her no portion. *Pitcairne v. Ogbourne*, 2 Ves. sen. 375.

If a creditor of one who is engaged in a treaty of marriage, is induced, in order to promote the match, or for any other purpose, to conceal part of his claim, he is bound by the misrepresentation. Thus, where the mortgagee of a person about to marry, at the solicitation of the mother of the latter, having stated to the father of the lady the amount of the mortgage debt as being less than was really due, and the mortgaged estate having been thereafter settled upon the marriage; the mortgagee was not allowed, in a suit for foreclosure, to claim a larger sum. *Barret v. Wells*, Prec. Chan. 131. So where, pending a treaty of marriage between A. and B., the mother of A., being entitled to one-third of a farm and stock, of which A. was in possession, represented to the father of B. that A. was the owner of the farm and stock, and was not indebted to anybody. Notwithstanding this representation, however, she shortly afterwards took a bond from A., for the value of her one-third part of the farm and stock, which the Court of Exchequer, on a bill filed by A. and B., ordered to be delivered up for cancellation, as a fraud on B. and her father. *Scott v. Scott*, 1 Cox, 366. In this instance, the plaintiff's case was proved by the father, to whom the representation was made, and who was held not to be a necessary party in the suit.

The leading modern authority for the principle is *Neville v. Wilkinson*, 4 B. C. C. 543, where an attorney, having, at the earnest request of the intended husband, concealed from the lady's father a debt owing to him from the former, was restrained from proceeding on a bond for its reco-

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TIONS.

Fraud not ex-  
cluded by the  
concurrence of  
the husband  
and wife.

Creditor con-  
cluded by mis-  
statement of his  
demand.

PRIVATE  
AGREEMENTS  
AND FALSE  
REPRESENTA-  
TIONS.

Fraudulent  
loan.

very. In this case, Lord *Thurlow* distinctly intimated, that it was not necessary that the concealment should relate to an article that was expressly contracted for.

Even a sum of money, lent for the purpose of enabling the intended wife to represent it as her own, cannot afterwards be claimed as a debt. *Gale v. Lindo*, 1 Vern. 475; *S. C.* 1 Eq. Ca. Ab. 88, (E.) pl. 1.

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SETTLEMENTS  
AGAINST CRE-  
DITORS.

Marriage a va-  
luable consider-  
ation.

VI. SETTLEMENTS CONSIDERED IN RELATION TO THE CLAIMS OF CREDITORS.

1. *Efficacy of the Marriage Consideration.*

Marriage is a valuable consideration. Hence it happens, that where a settlement is founded on it, neither the circumstance of the settlor being indebted, or even insolvent, at the time of its execution, (though such insolvency were known to the person in whose favour the settlement is made), nor the existence of any disparity in the situation of the marrying parties, not even the extremely suspicious fact of a mis-statement being made as to the person to whom the settled property belonged, would in the least affect the validity of the settlement. *Campion v. Cotton*, 17 Ves. 263. In the case of a sale for money, it is clear that the insolvency of the vendor would not disable him from making a title to a purchaser; and, by parity of reasoning, it is inoperative to invalidate a conveyance sustained by the no less valuable consideration of marriage (*a*). If, indeed, the settlor was a trader, and had committed a previous act of bankruptcy, on which a commission should issue within two months after the execution of the settlement, such settlement of course would share the fate of all other conveyances made under similar circumstances; and, if the wife had notice of such act of bankruptcy, it is conceived, that, *as to her*, the settlement would be void, even though more than two months should elapse before the issuing of the commission. Questions of this nature, however, less frequently arise in relation to a marriage settlement, than in transactions between vendor and purchaser, (under which head they have received attention, *vide ante*, Vol. 7, p. 379), the reason probably being, that sinking traders are, in general, more intent on the conversion of their property into money, than on the formation of matrimonial alliances.

Marriage consi-  
deration does  
not extend to  
strangers.

It should be observed, that the marriage consideration, efficacious as it is within the sphere of its proper influence, does not clothe with the character of purchasers all persons whose estates happen to be limited in a

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(*a*) As to the persons to whom the marriage consideration extends, *vide ante*, Vol. 8, p. 156.



settlement made on the occasion of marriage. Thus, if a man introduces into a settlement which he makes on his son's marriage, a limitation in favour of his own wife, (see 1 Cox, p. 286), this does not, or at least ought not to, fortify the estate of the wife against the claims of creditors. Indeed, there seems to be much less difficulty in forming a conclusion as to the principle applicable to such cases, than in reconciling all the authorities; but, as these authorities have been collected and discussed in a former volume, (*vide* Vol. 8, p. 156), the subject will be here dismissed, with the observation, that an exception to the doctrine has been established in the case of a settlement made by a widow about to marry, in favour of her existing children; for, though these objects are clearly not within the consideration of the projected marriage, yet, such a settlement has been held to be valid even against purchasers, since the contrary doctrine, it is considered, would have the effect of placing the children of the first marriage in the power of the second husband. *Newstead v. Searles*, 1 Atk. 265.

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ITORS.

Settlement by a  
widow about to  
marry, on her  
children.

Settlements after marriage, it is obvious, can derive no support from the consideration of the marriage, which, having preceded the settlement, could not have been induced by it. Such a settlement, therefore, will stand or fall according to the extrinsic circumstances on which its validity or invalidity depends; which will presently be inquired into. And here it may be observed, that a settlement executed after a marriage in Scotland, but previously to its being re-celebrated in England, is, for all purposes, to be considered a post-nuptial settlement. *Ex parte Hall*, 1 Ves. & Bea. 112.

Settlements af-  
ter marriage.

But, out of the preceding remarks on post-nuptial settlements must be excepted settlements made after marriage, in pursuance of articles before marriage; and also, settlements made in consideration of a portion or other valuable thing moving from the wife or her friends. Each of these will require a distinct consideration.

## 2. *Settlements after Marriage, in pursuance of Articles before Marriage.*

A settlement after marriage clearly can be protected by ante-nuptial articles, so far only as the limitations of it answer to or are embraced by those articles. Thus, if a man, on the marriage of his son, covenants to settle a jointure on his son's wife, and afterwards makes a settlement not only extending to the jointure, but limiting the inheritance to the issue, the settlement, *ultra* the jointure, would be voluntary, *i. e.* would stand in the same predicament as if the settlor, without any previous engagement whatever, had settled the reversion in fee expectant on the decease of the jointress on his grandchildren. See *Jason v. Tudor*, 1 Vern.

Settlements af-  
ter marriage,  
under articles.

VALIDITY OF  
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286; see also *Senhouse v. Earle*, Amb. 288 (a). So, if a man, upon his marriage, covenants to settle his lands upon his wife and issue, with reversion to himself in fee, and after marriage he conveys the estate according to the articles, except that, instead of limiting the reversion to himself, he carves some further limitations thereout in favour of his own or his wife's relations, the settlement as to these limitations (even assuming that the marriage consideration would in any case have extended to them,) is clearly voluntary. It is true, that in the case of *Partyn v. Roberts*, Amb. 315, Lord *Hardwicke* dismissed a bill by a creditor, which sought to have the settlement rectified by the articles, which gave the settlor a larger estate than the settlement; but it does not appear that he was indebted at the time he made the conveyance, and therefore such conveyance, even considered as a voluntary alienation, was unimpeachable. The plaintiff, indeed, made no allegation of fraud, but went upon his right generally to have the settlement rectified, which right the Lord Chancellor distinctly negatived.

Not necessary  
to recite the  
articles.

It cannot be necessary, in order to communicate to a post-nuptial settlement the support derivable from its connexion with ante-nuptial articles, that the articles should be recited; it would be enough that proof is adduced of their existence. The contrary hypothesis is apparently countenanced by the opinion of Lord *Hardwicke*, in the case of *Beaumont v. Thorpe*, 1 Ves. sen. 27, (in which case, however, the agreement to settle appears to have been rescinded before the marriage), but is opposed to every sound principle; nevertheless, the judicious practitioner will perceive in that opinion sufficient to recommend the practice, (which pretty generally prevails), of reciting the articles. On the other hand, it would not avail that a settlement executed after marriage was recited to be made in pursuance of an ante-nuptial contract, if the fact were otherwise. In the case of *Battersbee v. Farrington*, 1 Swanst. 106, the question was discussed, (though it was not necessary to decide) whether a recital in a settlement, of its being made in pursuance of articles entered into before the marriage, which were lost, was evidence of the existence of the articles against creditors; and Sir *T. Plumer*, M. R., was of opinion, that it was not; his Honor stating the distinction to be, that, against all persons claiming under the settlor, the recital was conclusive; but that it would be difficult to maintain, that a recital in a post-nuptial settlement of ante-nuptial articles, of the existence of which there was no distinct proof, would be binding upon creditors; for that such a doctrine

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(a) It should be observed, however, that in an early case, the expression "*making a jointure settlement*," was held to import, in legal construction, a settlement in common form to the husband and the issue of the marriage, with a jointure to the wife. See *Anon.* Pre. Ch. 520.

would give to every trader a power of excluding his creditors by a recital in a deed to which they were not parties.

There seems to be considerable doubt whether a settlement after marriage, in pursuance of an agreement before marriage, which is merely oral, can be sustained as an ante-nuptial settlement. The point, it is apprehended, must depend upon the binding effect of such an agreement; for, if it is incapable of being enforced either at law or in equity, it must necessarily be inoperative to render a post-nuptial settlement valid against creditors. (But observe the distinction taken, 2 Lev. 147). Sir *E. Sugden* (Pow. 5th ed. 438) suggests, that perhaps the settlement might be binding on creditors, though void against purchasers. No reason is assigned for this distinction. It is clear, that, before the statute of frauds, 29 Car. 2, c. 3, an oral agreement in consideration of marriage was good; *Griffin v. Stanhope*, Cro. Jac. 454; *Bovye's case*, Vent. 194; but the 4th section of that statute provided, that no action should be brought whereby to charge any person, upon an agreement made upon consideration of marriage, unless some memorandum or note thereof shall be in writing, and signed by the party to be charged therewith, or some other person by him lawfully authorized. An attempt has been sometimes made to evade the vacating effect of this clause of the statute, by treating marriage as a part performance; but which is evidently wrong, since it would apply to every possible case, and reduce the clause to a nullity, because, until the marriage, no cause of action could well arise under such an agreement. *Bawdes v. Amhurst*, Pre. Ch. 401; *Maxwell v. Montacute*, Ib. 526; *S. C.* 1 Eq. Ca. Ab. 119; *Sansum v. Butter*, 1 Bac. Ab. Gwill. ed. 119. But, if fraud and circumvention have been practised, the statute will be no bar. *Mallett v. Halfpenny*, 1 Eq. Ca. Ab. 20, pl. 6; *S. C.* cit. Pre. Ch. 404; see *Pitcairne v. Ogbourne*, 2 Ves. sen. 375. If proof of the existence of an oral ante-nuptial contract will not support the settlement, of course a recital that it was made in performance of such an agreement would not; *Battersbee v. Farrington*, 1 Swanst. 106; though, in one instance, in which a bill was filed by creditors to set aside a settlement containing such a recital, Lord *Thurlow* inquired, whether there was any case, where, in the settlement, the parties recite an agreement before marriage, in which it has been considered as within the statute; to which the Solicitor-General (afterwards Lord *Eldon*,) said, he did not think it would be good. The case, however, seems to have been decided on another ground. *Dundas v. Dutens*, 1 Ves. jun. 196. Sir *W. Grant*, in the case of *Randall v. Morgan*, 12 Ves. 74, refers to this question of Lord *Thurlow*, but without expressing his own opinion on the subject. He also cites the dictum of Lord *Hale*, in *Lavender v. Blackstone*, 2 Lev. 146, but erroneously treats it as affirming the settlement to be void; its purport is, that a parol ante-nuptial promise by an infant to make a settlement when he should attain the age of twenty-one, though

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TORS.

Parol ante-nuptial agreement not sufficient to support a settlement.

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not binding on account of the infancy, would prevent the settlement from being fraudulent—a point which involves a principle of considerable importance, and one on which it is believed no decision has yet been made. The Master of the Rolls appears also to have overlooked, as a learned writer has done, (see Atherley on Settlements, p. 149), the fact, that the *dictum* on which he commented was *before* the statute of frauds, and therefore is *now* irrelevant to the point. The same observation applies to *Griffin v. Stanhope*, Cro. Jac. 454; and *Bovye's* case, 1 Vent. 194.

3. *Settlements after Marriage, of the Wife's own Property, or supported by a valuable Consideration moving from her or her Friends.*

Settlement of wife's equitable choses en action, when valid.

A settlement made by the husband, of that portion of an equitable chose en action belonging to his wife, which a Court of equity would have compelled him to settle, is no less valid against creditors than such a settlement would have been if made under the direction of the Court, being in fact a settlement of the wife's own property; nor would it be material that the settlement differed in its objects and provisions from that which the Court would have directed, or even, perhaps, that it embraced a somewhat larger share of the fund than would have been judicially settled, which is generally one half. Indeed, though it is now well established that the Court, under any circumstances, never settles the entire fund, (*vide ante*, Vol. 5, p. 574), yet, in several instances, settlements made by the parties of the whole have been supported against creditors. Thus, in the case of *Moor v. Rycault*, Pre. Ch. 22, where the wife's portion being in trustees' hands, her friends refused to part with it, unless the husband would give security that it should be settled for the benefit of his wife; and accordingly it was agreed, that it should be laid out in land, to be settled to the use of the husband and wife, and the heirs of their bodies; and a judgment was given by the husband for this purpose. A creditor of the husband filed a bill, charging that the settlement was after marriage, and voluntary; but the Court dismissed the bill, observing, that, if the husband himself had exhibited a bill against the trustees for the portion, the Court would not have decreed it to him without making some such settlement.

Settlement of equitable property of the wife supported against creditors.

So, in the case of *Middlecome v. Marlow*, 2 Atk. 519, where A., being entitled to a leasehold estate and a share, amounting to 500*l.*, in the residue of her father's personal estate, the husband agreed with the executors, that the 500*l.* should be settled for her separate use for life, and, after her death, to the issue of the marriage; and, by the deed of settlement, the trustees were empowered to lend the money to the husband, which they did; and he becoming bankrupt, the trustees filed the present bill, to be admitted creditors under the commission. The husband's assignees contended that the receipt of the money by the husband was



to be considered as a payment of the legacy; but Lord *Hardwicke* decided in favour of the plaintiffs' claim. "Upon the general equity in this Court," said his Lordship, "neither the husband nor any person standing in his place, can have the fortune of the wife, without making a provision. If the trustees of the husband have done the same thing, with regard to the wife, which the Court would have obliged them to do, how is it unreasonable? For, though I agree the Court would not have directed this settlement, supposing the husband had an estate of his own to settle, yet, it was very proper, as there is no consideration on the husband's side; and as the Court would have done just the same thing, upon the Master's reporting this to be the circumstance of the case, there is no ground to call it an unreasonable settlement."

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In the last case, Lord *Hardwicke* observed, that the husband had not a single creditor at the time; which circumstance renders the case an inconclusive authority on the point under consideration; since, even if the settlement had comprised the husband's own property, and not that of the wife, it would have been good. Upon principle, certainly, there seems to be no reason why the wife's equity should validate the husband's settlement of her *choses en action* against the claims of creditors, to an extent exceeding the share to which that equity would have entitled her; though it is probable, as already suggested, that the Court would not be disposed to disturb the settlement on account of an inconsiderable excess. At all events, it is clear that a post-nuptial settlement by the husband of his wife's legal *choses en action*, which are absolutely recoverable by him at law, without being subject to any equity of the wife, has no greater validity against the claims of those creditors than a settlement of his own property. *Pringle v. Hodgson*, 3 Ves. 617. And, by parity of reason, a settlement by the husband and wife, of her real estate, is, to the extent of his marital interest, regarded as the husband's own settlement. *Fitzer v. Fitzer*, 2 Atk. 511.

Remarks upon  
the case of  
*Middlecome v.*  
*Marlow.*

A settlement of any species of property, made in consideration of the wife giving up some interest in the same, or any other property over which she has a disposing power, is clearly good against the claims of creditors. If, therefore, a married woman, having, by virtue of an antenuptial settlement, or otherwise, an interest exclusively of her husband in Whiteacre, or, having an initiate right of dower therein, is induced to join in a conveyance of that estate, in consideration of the estate Blackacre being settled upon her and her children, this, of course, would make both herself and the children purchasers of the respective interests taken by them in Blackacre. *Scott v. Bell*, 2 Lev. 70; *Lavender v. Blackstone*, 2 Lev. 147; *Jones v. Boulter*, 1 Cox, 288. And in the cases under consideration, it is probable that the Court would not weigh in very nice scales the relative value of the interest given up and the interest taken. It would be enough that there was such a "reasonable proportion" (this

Settlements supported by a consideration moving from the wife herself.

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is Lord *Eldon's* expression) between them, as to afford ground to conclude that the one was the consequence of and induced by the other. In some of the early cases, indeed, a much larger latitude appears to have been allowed than consists with this doctrine. Thus, in *Jones v. Marsh*, Cas. Temp. Talb. 64, stated *ante*, Vol. 8, p. 155, the payment of a portion of 100*l.* was deemed a sufficient consideration to support a settlement of land of the value of 100*l. per annum*. And in *Scott v. Bell*, 2 Lev. 70, the newly settled lands were said to be *double* the value of the jointure lands, in the conveyance of which the wife had joined; and yet, the new settlement was held to be valid: In both these cases the settlement was sustained against purchasers. In the case of *Dolin v. Coltman*, 1 Vern. 294, however, possibly the vacating of the settlement may be referred to the inadequacy of the consideration. The husband, being about to mortgage lands in which his wife had an initiate right of dower, in consideration of her joining in a fine, stipulated that she should have the equity of redemption; and this agreement was held to be void as against two subsequent mortgages from the husband; but the particular grounds of the decision are not stated.

The cases do not appear to supply a more definite rule than that which is laid down by Lord *Hardwicke* in the case of *Ward v. Shallett*, 2 Ves. sen. 18, that the settlement would be good, unless it vastly exceeded the consideration; *so that it might be presumed, from the inadequateness, a collusion or fraud was intended*. See also *Russell v. Hammond*, 1 Atk. 13.

Case of *Arundel*  
*v. Phipps*.

In the case of *Lady Arundel v. Phipps*, 10 Ves. 149, the husband's property, purchased by Lady A. out of her separate estate, was valued at 26,000*l.*; in consideration of which, Lady A. released her husband from a debt of 3716*l.*, and charged her estate, after the death of the survivor of herself and Lord A., with the sum of 12,000*l.*, for the purpose of discharging his debts; Lord *Eldon* granted an injunction to restrain a creditor from taking out execution under a judgment obtained in an action at law, in which the settlement in favour of Lady A. had been held to be fraudulent by the Court of King's Bench, (*Dewey v. Bayntun*, 6 East, 257), and directed an action to be brought in the Court of Common Pleas, for the purpose of trying the question as to the adequacy of the consideration. The cause, however, was terminated in this stage by compromise.

*Semle*—Settle-  
ment may be  
good *pro tanto*.

Whether a consideration which is inadequate to sustain the whole settlement, would support it *pro tanto*, has never been decided, unless the case of *Dolin v. Coltman*, 1 Vern. 294, can be referred to this principle, which seems probable; for, though the settlement in consideration of the wife giving up her dower was vacated, she was held to be entitled to the value of the dower which she had released. From Lord *Eldon's* expressions in the *Arundel* case, it is to be inferred that his Lordship was of opinion that the settlement might be good *pro tanto*; for he states the

question to be, whether, on account of the immense value of the property settled, the settlement was not fraudulent *as to a great part*.

It remains to be observed, that the consideration need not be stated in the settlement (a); and, if two transactions are contemporaneous, the presumption is, that the one formed the consideration for the other. Thus, in the case of *Scott v. Bell*, 2 Lev. 70, where lands being limited, on the marriage of A., to him for life, remainder to the wife for life, remainder to his first and other sons in tail; and A. having no issue, his wife joined with him in the sale of the settled land; and on the same day A. settled other lands of which he was seised in fee, to the uses of the settlement. It was objected, that this settlement was void against a purchaser; 1st. Because it did not appear that the second settlement was made in consideration of the wife levying a fine of her jointure lands, and therefore, the fine and sale by the wife, and settlement by the husband, were both voluntary. 2ndly. That, at all events, the new settlement was voluntary as to the remainders. But the Court overruled both these objections, holding, 1st. That, as the old settlement was destroyed, and a new one made the same day, the fact of the one being the consideration for the other was to be presumed, and that the consideration extended to all the uses of the settlement; for it was to be considered that the wife would not part with her interest under the old settlement, unless the husband would make a provision for the issue by the new.

But, of course the presumption in question will yield to evidence of a contrary intention apparent on the face of the deeds themselves. And where several settlements are executed on the occasion of a pecuniary portion being paid by a third person, part of which is expressed to form the consideration in one of the deeds, and the remainder in another, but the portion is wholly unnoticed in the third, the consideration will be applied exclusively to the two former. *Russell v. Hammond*, 1 Atk. 13.

The act of the wife, which forms the motive for the settlement, must be effectual; otherwise it is the mere shadow of a consideration. In this point of view it is difficult to acquiesce in some of the decisions. Thus, in *Ward v. Shallett*, 2 Ves. sen. 17, a settlement of a lease on the wife and children was sustained against the husband's assignees in bankruptcy, on the ground of its being in consideration of her giving up a contingent interest and a bond given by the husband before marriage, but which interest, according to the present doctrine on this subject, it was not in her power, while covert, to bind. So, in the case of *Jones v. Boulter*, 1 Cox, 288, a settlement executed upon the marriage of the settlor's son, under which his own wife took an estate for life, was sustained *quoad* the limitation to the wife against the claim of creditors, on ac-

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Contemporaneous settlements presumed to be in consideration of each other.

Unless the contrary be expressed.

Professed conveyance by the wife must be effectual.

(a) But, if it were pecuniary, remember the provision of the stamp act, (55 Geo. 3, c. 184), *ante*, Vol. 8, p. 204.

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Where consid-  
eration moves  
from the wife's  
friends.

count of her having joined in a deed conveying another estate in which she had a right of dower, *although no fine was levied*, and therefore the dower was not effectually barred.

Where the consideration proceeds, not from the wife herself, but from her friends, the settlement, of course, is equally within the protection of the principle under consideration. Thus, if the wife's father, or any other relation, agrees to advance a sum of money, to be paid to the husband, or settled on the husband and wife and their issue, in consideration of a settlement to be made by him, such settlement will maintain its ground against both creditors and purchasers. *Colville v. Parker*, Cro. Jac. 158; *Anon.*, Forrest, 64, (stated *ante*, Vol. 8, p. 156); *Brown v. Jones*, 1 Atk. 188; *Stileman v. Ashdown*, 2 Atk. 477. See also *Russell v. Hammond*, 1 Atk. 16.

And the giving an additional security for an existing portion would, it seems, be sufficient. Thus, where A., being entitled to a portion of 6000*l.*, had clandestinely married B., and, after the marriage, the lady's father, in consideration of a settlement made by the husband, secured the 6000*l.* on his estate, which the husband, after the father's death, received; Lord *Hardwicke* held that the settlement was good against the husband's creditors. *Wheeler v. Caryl*, Amb. 121.

Not material  
that the agree-  
ment is not per-  
formed on the  
other side.

The validity of the settlement would not be affected by the circumstance that the mutual agreement, in pursuance of which it was made, has not been performed on the other side. Thus, where the respective parents of the husband and wife mutually agreed to make a provision, by way of annuity, for the married parties, and one of them did not perform his part of the agreement until after the other had become bankrupt, the bond executed by the latter, in pursuance of this agreement, was held to be unimpeachable by his creditors under the bankruptcy. *Ex parte Hall*, 1 Ves. & Bea. 112.

4. *As to Settlements void from being within the Stat. of 13 Eliz. c. 5,*  
(stated *ante*, Vol. 6, p. 184).

Settlements by  
persons involv-  
ed in debt, not  
valid.

If a person involved in debt makes a voluntary (*a*) or gratuitous disposition of his property, whether in favour of the members of his own family or of strangers, the act is considered as done with a view to elude the just claims of his creditors; and therefore, the settlement is within the purview, and becomes subject to the vacating operation of the stat.

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(*a*) This word does not occur in the statute, and the use of it has sometimes been reprehended, as calculated to mislead. Its signification is quite technical, for it imports, not the opposite to compulsory, according to its popular meaning, but, without a valuable consideration, *i. e.* gratuitous.



of 13 Eliz. c. 5. *Beaumont v. Thorpe*, 1 Ves. sen. 27; *Fitzer v. Fitzer*, 2 Atk. 511; *Taylor v. Jones*, Ib. 600; *Pringle v. Hodgson*, 3 Ves. 617. And the insertion of a colorable or inadequate consideration would be inoperative to maintain the settlement; as in the case of *Mathews v. Feaver*, 1 Cox, 278, where, at the instance of a bond creditor, Sir L. Kenyon, M. R., vacated a deed, by which a trader, aged seventy-seven, conveyed all his property, worth 1000*l.*, to his son, in consideration of natural love and affection, and a life annuity of 30*l.*

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But, if the settlor were not indebted at the time, the settlement clearly would be unimpeachable by his subsequent creditors.

*Contra*, where the settlor was not indebted. Lord Hardwicke's statement of the doctrine.

In the case of *Townshend v. Windham*, 2 Ves. sen. 11, Lord Hardwicke stated the rule to be, "that, if there be a voluntary conveyance of real estate or chattel interest by one not indebted at the time, although he afterwards becomes indebted, if that voluntary conveyance was for a child, and no particular evidence or badge of fraud, to deceive or defraud the subsequent creditors, that will be good; but, if any mark of fraud, collusion, or intent to deceive subsequent creditors appear, that will make it void, otherwise not; but it will stand, though he afterwards becomes indebted." The doctrine thus clearly stated, though on another occasion (a) apparently lost sight of by the great Judge whose *dictum* has been cited, was confirmed by him in the cases of *Walker v. Burrows*, 1 Atk. 93, and *Middlemore v. Marlow*, 2 Atk. 518, and has been since recognised by Lord Kenyon, (*Stephens v. Olive*, 2 B. C. C. 90), Lord Alvanley, (*Lush v. Wilkinson*, 5 Ves. 387), Sir W. Grant, (*Kidney v. Coussmaker*, 12 Ves. 155, *Sykes v. Hastings*, cit. 1 Madd. 421), and Sir T. Plumer, (*Battersbee v. Farrington*, 1 Swanst. 113), while they successively presided at the Rolls.

And the doctrine is not limited, as in the terms of Lord Hardwicke's position, to conveyances to children, for it unquestionably applies to settlements not only in favour of more remote relations, but also of mere strangers. Thus, where A., by a settlement dated 22nd December, 1810, reciting that she was entitled to the fourth share of certain estates, parts of which had been contracted to be sold, covenanted with trustees, that out of her share of the monies to be produced by the sale, she would pay them 36,000*l.*, upon trust to invest the same in Government securities, and apply the dividends (subject to her appointment) to A. for life, and, after her decease, upon trusts for certain persons, one of whom, it seems, was a natural child of the settlor. After the decease of A., creditors, whose debts were subsequent to the settlement, filed a bill to set it aside as voluntary; but, there being no allegation in the bill that the settlor

Settlement by a person undebted, in favour of strangers, supported.

(a) See *Fitzer v. Fitzer*, 2 Atk. 511, where Lord Hardwicke, without entering into the inquiry as to the existence of debts at the time, treated a settlement by a man on his wife as void against a subsequent creditor.

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was indebted at the time of the settlement, Sir *T. Plumer*, V. C., dismissed the bill, refusing an inquiry before the Master, whether this were the fact or not (a). After observing that the objects of the settlement were to be regarded as strangers, and referring to the terms of the statute 13 Eliz. c. 5, his Honor said—"A voluntary conveyance may be made of real or personal property, without any consideration whatever, and cannot be avoided by subsequent creditors, unless it be of the description mentioned in the statute: If a person having 1000*l.* a-year, and not indebted at the time, gives away 500*l.* a-year, the gift is not fraudulent, unless it were made with an intent to defraud subsequent creditors. Its being voluntary is *prima facie* evidence, where the party is loaded with debt at the time, of an intent to defeat and defraud his creditors; but, if unindebted, his disposition is good. There is no suggestion in the bill that this settlor was indebted at the time; she was not in trade; and the settlement did not include all her property, 6000*l.* being left unsettled. She was culpable in becoming the parent of such a child, but, the child being born, it was her duty to protect and provide for it." *Holloway v. Millard*, 1 Madd. 414.

Debt secured by mortgage will not vacate the settlement;

And the existence of a debt which is adequately secured by mortgage, clearly would form no ground for impeaching the validity of the settlement. Thus, where A., after marriage, by indentures of lease and release, dated the 6th and 7th of May, 1774, settled his real estate on himself for life, with remainder to his wife for life, with remainder to a trustee for a term, for raising younger children's portions, remainder to his first and other sons in tail, remainder to his daughters in tail, with remainder to himself in fee. By another deed of the same date, he mortgaged the estate to B., for securing 500*l.* and interest. On the 6th of March, 1775, he became indebted in 500*l.* by bond to C., whose executor now filed a bill impeaching the validity of the settlement. But Sir *Lloyd* (afterwards Lord) *Kenyon*, M. R., held that it was good, on the ground that the debt was secured by a mortgage. *Stephens v. Olive*, 2 B. C. C. 90. See also *Lush v. Wilkinson*, 5 Ves. 384, stated *infra*; but see *Richardson v. Smallwood*, Jacob, 582.

—nor trivial debts, though unsecured.

Nor would the fact of the settlor's owing a few trifling debts, though unsecured, affect his competency to make a gratuitous disposition of his property. Thus, in the case of *Lush v. Wilkinson*, 5 Ves. 384, where A. settled certain leaseholds (then in mortgage) in trust for himself for life, and, after his decease, to pay his wife an annuity of 50*l.* for life, and then in trust for himself, his executors, &c. After the death of A., a creditor filed a bill against the widow, to set aside the settlement, alleging that it was subsequent to the marriage, and made during insolvency;

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(a) But an inquiry will be granted, if, in a suit by creditors against devisees, the fact of the existence of the settlement come out in the answer. *Kidney v. Coussmaker*, 12 Ves. 155.

but the widow stated in her answer, that the settlor was not insolvent, and did not owe, in addition to the mortgage debt, above 100*l.*, which were paid before his death. Sir *P. Arden*, M. R., dismissed the bill, giving the plaintiff liberty to file another. "I have great doubt," observed his Honor, "whether you have a right to come without proving any one antecedent debt. In *Stephens v. Olive*, Lord *Kenyon* seems to think, that, without an antecedent debt proved, there is no such right. *A single debt will not do.* Every man must be indebted for the common bills for his house, though he pays them every week. It must depend upon this, *whether he was in insolvent circumstances at the time.*"

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The recent cases, in requiring positive evidence of the insolvent or indebted situation of the settlor, when he made the settlement, seem to have reversed the rule adopted in some of the earlier cases, which threw upon the persons affirming the validity of the settlement, the *onus* of proving that the settlor's circumstances were such as entitled him to make it. *Taylor v. Jones*, 2 Atk. 600. The modern doctrine, however, seems to be more reasonable than that which it has superseded, as fraud ought not to be presumed, especially where the facts creating the presumption are capable of being proved, which is obviously the case in this instance; for it may easily be shewn, by positive evidence, that a man is indebted, while the contrary is a fact not susceptible of such proof. The doctrine amounts to this:—the person impeaching a settlement must shew such an extent of debt or pecuniary embarrassment as to raise a *prima facie* case of fraudulent intention in the settlor; to meet which case, it is incumbent on the opposite party to prove the adequacy of the settlor's property to pay these debts, or, in other words, his solvency; for it is conceived, that any extent of debt short of insolvency would not invalidate a settlement. Certainly none of the cases quite come up to this point, and a contrary position was advanced by Sir *T. Plumer*, in *Richardson v. Smallwood*, Jacob, 552; but, in that case, the allegation of insolvency was far from being satisfactorily disproved, the settlor being, beyond all doubt, in very necessitous and embarrassed circumstances when he executed the settlement. The language of the Judges who decided some of the preceding cases, demonstrates, that the solvency of the settlor was, in their opinion, the proper test of a man's competency to make a gratuitous disposition of his property—a principle which is also strongly confirmed by its adoption in the late general bankrupt act, (6 Geo. 4, c. 16, s. 73), treated of in the next section; for it could not be the intention of the Legislature, in passing that statute, to apply to the voluntary settlements of traders a vacating rule more lenient than that which obtained under the pre-existing statute, in regard to settlements in general.

Modern and ancient doctrine compared.

Perhaps it ought to be stated, to prevent mistake, that the solvency of a settlor, in order to protect his alienation, must be independent of the property so aliened. And therefore, if, (as happened in *Mathews v. Feaver*, 1 Cox, 278), a man possessed of property worth 1000*l.*, and

Solvency the test of the settlor's ability to alien his property.

Import of the term "solvency."

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owing 300*l.*, makes a settlement of all his property, the settlement is clearly void; for, though he was solvent *before* he made the settlement, yet it *left* him in a state of inability to pay his debts. Possibly this point was in the view of Lord *Hardwicke*, when, in *Walker v. Burrows*, 1 Atk. 93, he stated it to be essential to the invalidity of a settlement, to prove that "the party was indebted at the time, or *immediately after* the execution of the deed."

As to debts not due at the time of the settlement.

Though the debts by means of which a settlement is invalidated must be *owing*, they need not be *due* at the time of its execution, nor is it material what was the nature of the valuable consideration in which they originated. A *post obit* covenant in a marriage settlement, therefore, may constitute a sufficient debt for this purpose. *Mathews v. Feaver*, 1 Cox, 278; *Rider v. Kidder*, 10 Ves. 360. See *Richardson v. Smallwood*, Jacob, 552.

Creditor suing in equity when sent to law.

If there is any doubt as to the *bonâ fide* nature of the claim of a creditor who seeks equitable relief against a settlement, the Court will require him first to establish his claim at law. *Colman v. Sarrell*, 1 Ves. jun. 50.

The statute, it should be observed, only invalidates the settlement *quoad* the claims of creditors, and, these being satisfied, it still binds any portion of the settled property which those claims do not exhaust; *Curtis v. Price*, 12 Ves. 103; the voluntary alienee having, it is clear, a preferable title to subsequent volunteers claiming by deed, as well as to all devisees. *Villiers v. Beaumont*, 1 Vern. 100; *Boughton v. Boughton*, 1 Atk. 625.

Subsequent creditors let in.

Where a settlement is vacated by reason of the existence of a contemporaneous debt, the property thus gained is thrown open to the creditors at large, subsequent as well as prior; *Walker v. Burrows*, 1 Atk. 93; *Taylor v. Jones*, 2 Atk. 600; *Montague v. Sandwich*, cit. 12 Ves. 156, n.; *Richardson v. Smallwood*, Jacob, 552; assuming, of course, that some of the latter class remain unsatisfied, which, it should be observed, is not essential to entitle subsequent creditors to the benefit of the statute. *Lush v. Wilkinson*, 5 Ves. 387.

Statute 13 Eliz. does not extend to copyholds.

Lands of copyhold tenure being, generally speaking, not subject to debts, have been held not to be within the statute of the 13th of Elizabeth; *Mathews v. Feaver*, 1 Cox, 278; in which point, it will be remembered, it differs from the statute of the 27th year of the same reign, passed for the protection of purchasers. (*Vide ante*, Vol. 8, p. 143).

Whether a settlement of property not liable to execution can be set aside in equity.

And this leads to the consideration of a point which is touched upon in some of the cases; namely, whether a creditor can institute a suit to set aside a settlement of property which he could not have reached by any legal process, as stock in the public funds, *choses en action*, &c. In the case of *Taylor v. Jones*, 2 Atk. 600, creditors filed a bill against a man who had settled stock in trust for himself for life, and then for his wife for life, and then for the children, and obtained a decree declaring the settlement to be void, and directing the sale of the trust property for the benefit of the creditors. The same thing was attempted in the case of



*Dundas v. Dutens*, 1 Ves. jun. 196, cit. 2 Ball & B. 233, before Lord *Thurlow*, when his Lordship expressed some surprise at the case in *Atkyns*, declaring that the doctrine was "quite new" to him; for, as the property could not be taken on a *levari facias*, equity could not touch it; and his Lordship accordingly dismissed the bill. Lord *Eldon* has since (see *Rider v. Kidder*, 10 Ves. 369) concurred in condemning the principle of the case of *Taylor v. Jones*, the authority of which must therefore be considered as overruled. Nothing, indeed, can shew more strongly the infirmity of the doctrine of that case, than the vague and unsatisfactory reasoning by which some respectable writers have attempted to sustain it. 1 *Rop. Husb. & Wife*, 311. At the death of the settlor, however, the circumstances are materially changed; for, as the general property, whether liable to an execution or not, is *then* applicable, as assets, to the payment of his debts, the question of the validity of the settlement may of course be raised on a bill in equity filed by the creditors for this purpose. See 10 Ves. 369. *Grogan v. Cooke*, 2 Ball. & B. 233.

An important question, arising on the statute of the 13th of Elizabeth, is—Whether a settlement originally void against creditors, as it respects the donee himself, may not have become unimpeachable in the hands of his *grantee*, by the effect of a valuable consideration given to him by the latter? The doctrine has long been familiar in relation to the statute of the 27th of Elizabeth, (stated *ante*, Vol. 8, p. 171); but the principle of the decisions on that statute does not necessarily apply, because the circumstance which invalidates the deed against *creditors*, namely, the insolvency of the grantor, exists at the time of its execution, while, on the other hand, in regard to *purchasers*, the deed is vacated by matter subsequent thereto; and, if the donee's alienation for value precedes the sale which constitutes such matter, its superiority seems to be called for by the rule *qui prior est in tempore potior est in jure*. But, whatever weight there may be in such reasoning, it is important to observe, that, in the more recent of the only two cases which the books present on the subject, the greatest equity Judge of modern times sustained the voluntary donation against creditors, because the subject of it had got into the hands of a purchaser, deeming it immaterial whether the value was received by the grantor himself or by the grantor's alienee, and whether it consisted of marriage or money. The first of such cases is *The East India Company v. Clavel*, Prec. Chan. 377, where A., on his being appointed president of Bengal, by articles, for himself, his executors, and administrators, (*not heirs*), covenanted with the East India Company for the due execution of his official duties, and not to convert any of the goods of the Company to his own use; and at the same time, A. with R. and C., as his sureties, became bound in a bond for 2000*l.* for the performance of the articles. A., previously to his proceeding on his voyage, conveyed his estate to trustees for a term of one thousand years, in trust to raise 5000*l.* as a portion for his daughter on

Effect of an  
alienation for  
value, by the  
donee.

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her marriage, and also a provision for his debts. On the credit of this portion the daughter married B., and died, and B., as her husband and administrator, after the decease of A., filed a bill for the recovery of his wife's portion, which was resisted by the East India Company, on the ground that A. had died largely indebted to them, and consequently the settlement was void. In support of the settlement it was contended, that though voluntary in its creation, yet, being the motive and inducement for B. to marry the daughter, this had made it valuable. The Lord Chancellor, however, though he considered that the settlement was not executed with a fraudulent intention, held that the Company had a claim as against B. to have the amount of the *bond* raised out of the estate, but not the rest of the demand, because the heirs were not named in the articles. This case, therefore, might seem to be an authority against the doctrine in question, since the creditor's claim was let in on the estate, so far as it was capable of reaching the real assets.

Purchaser from  
donee preferred  
to creditors of  
donor.

The other decision which has been referred to is the case of *George v. Milbanke*, 9 Ves. 190, where certain estates were limited to trustees for three thousand years, upon trust, after the decease of A., to raise 5000*l.*, and pay the same to such persons as A. by deed or will should appoint; and A., without consideration, by deed poll appointed that 500*l.* should, after his decease, be raised for the use of his natural son B.; which sum B., shortly after A.'s death, assigned by way of mortgage, to secure 400*l.* and interest advanced to him by L. and C., against whom (among others) the present bill was filed by a creditor of A., claiming the whole 5000*l.* The mortgagees contended, that, being purchasers for value, without notice, they came within the protection of the 6th section of the statute of 13 Eliz. Lord *Eldon*, after much consideration, decided in their favour, admitting, however, that the case of *The East India Company v. Clavel*, so far as it applied, inclined the other way; but his Lordship was of opinion that the purchasers who had paid their money for this specific property, had a better equity than the general creditors claiming it only as part of the assets, and that the case was the same in principle as if the mortgagees had advanced the money to B., immediately on A.'s appointment to them, instead of subsequently advancing it to the appointee, upon the authority of that instrument.

Remark on  
*George v. Mil-*  
*banke*.

This decision, therefore, goes the whole length of the principle in question, and was so treated by Sir *W. Grant*, in the case of *Daubeny v. Cockburn*, 1 Mer. 638, in which the doctrine was incidentally noticed.

As to voluntary  
obligations.

The validity of voluntary obligations for the payment of money is, generally speaking, to be tried by the same principles as actual settlements of property, allowing, however, for the difference between an executed and an executory gift, which is certainly considerable; for, a bond or covenant would not entitle the obligee or covenantee to claim, *pari passu* with creditors for value, in every instance in which an actual settlement of property would be effectual against creditors of the same class; and it

is observable, that the position affirming the precedency of the claims of creditors for value to claims founded on voluntary engagements only, is always stated in general terms, without regard to the solvency of the debtor when he contracted the voluntary debt. See *Boughton v. Boughton*, 1 Atk. 626.

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But it is well established, that the delivery up of a voluntary bond, or the release of any voluntary debt actually accrued, may form a valuable consideration for the conveyance of an estate, or for a substituted engagement. One of the earliest authorities for this principle is the case of *Stiles v. Attorney-General*, 2 Atk. 152, where the Duke of Wharton having granted to the celebrated Dr. Young, the author of the *Night Thoughts*, an annuity of 100*l.* for his life, as an encouragement to learning, and having subsequently granted a further annuity of 100*l.*, in consideration (among other charges) of 350*l.* accrued for arrears under the former grant; Lord *Hardwicke* was of opinion that this was a valuable consideration to support the second annuity, the arrears being a good and lawful debt between the parties; and, therefore, the promissory note to sue for them was a good consideration.

Cancellation of a voluntary bond, &c., a valuable consideration.

So, in *Gilham v. Locke*, 9 Ves. 612, where, after a marriage between A. and B., it was discovered that he had a wife living; whereupon A., in order to make B. some compensation, gave her a bond to secure an annuity of 40*l.* for life. The annuity being three years in arrear, A. assigned to B. some leasehold premises, in consideration of 350*l.*, of which 120*l.* was made up of the arrears in question. A. became bankrupt, and his assignees filed a bill to set aside this assignment; but Sir *W. Grant*, M. R., dismissed the bill, on the ground that the arrears which had accrued under the voluntary bond formed a valuable consideration for the assignment. So, in the case of *Ex parte Berry*, 19 Ves. 218, where A., whose deceased father had given portions to all his children except one, knowing his father's intention to make a provision for that one, gave her a bond for the amount. The bond was afterwards given up, and, in consideration of its surrender, another was given. A. became bankrupt, and the obligee by the present petition claimed to prove the substituted bond under the commission. Lord *Eldon* granted the order, on the ground that the first bond being good between the parties, the surrender of it formed a valuable consideration for the second. His Lordship said, that if payment had been enforced under the first bond, the money could not have been recovered by the assignees, and the obligor instead of payment having given another bond, this was not voluntary. His Lordship admitted that it would be otherwise if it appeared that the second bond was given with the design of substituting a bond upon consideration in the room of a voluntary bond.

So, as to release of an annuity granted without consideration.

Again, in the recent case of *Tanner v. Byne*, 1 Sim. 167, where A., by a settlement after marriage, covenanted with trustees, within three months

VALIDITY OF  
SETTLEMENTS  
AGAINST CRE-  
DITORS.

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Conveyance  
made for the  
purpose of  
avoiding an ex-  
ecution, sup-  
ported.

Remarks upon  
*Lewkner v.*  
*Freeman*, and  
*Pickstock v.*  
*Lyster*.

to invest 4000*l.* in the funds, in trust to pay the dividends to himself for life, and then to his wife for life, and, at the decease of the survivor, to divide the capital equally among their children; the money was not paid, and, three years afterwards, A. executed a mortgage to the trustees for the 4000*l.* and interest, treating it as a loan, though no money passed; and it was held that the surviving trustee was a specialty creditor of A. at the time of his decease; the transaction being considered to be substantially the same as if the 4000*l.* had been actually paid by A., and then returned to him by way of loan.

This section cannot properly be concluded without an observation respecting the validity of deeds executed pending a suit, with a view to withdraw the property from the reach of the suing creditor. In several instances deeds having this object have been supported. Thus, in the case of *Lewkner v. Freeman*, Pre. Ch. 105; *S. C.* 1 Eq. Ca. Ab. 149, pl. 5, where B., pending an action of crim. con. against him by A., conveyed his land to trustees, in trust to pay his debts mentioned in a schedule, and such other debts as he should appoint. A. recovered 5000*l.* damages, and brought this bill to be relieved against the deed, as made to defeat him of his debt; but the Court held, that the deed was not fraudulent either at law or in equity; for, though it were made with intent to prefer the grantor's real creditors before this debt, when it came afterwards to be a debt, yet it was a debt founded in *maleficio*, and therefore it was conscientious in him to prefer the other debts before it; but it was declared that the plaintiff might come in upon the surplus, after the scheduled debts were satisfied. So, in *Pickstock v. Lyster*, 3 M. & S. 371, (stated *ante*, Vol. 6, p. 189), the Court of King's Bench held, that an assignment of the assignor's effects, for the benefit of creditors at large, in order to avoid the execution of a suing creditor, was good.

It is observable, that in both these cases the conveyance was made for the benefit of creditors; and the reasoning of the Court in favour of their validity would not have applied to a conveyance for the benefit of a less favoured class of *volunteers*. The applicability of this term to creditors, it will be remembered, depends on their not having been privy to the deed, (*ante*, Vol. 8, p. 561), which, it is to be inferred, was the fact in both these instances.



SETTLEMENTS  
BY AND ON  
BANKRUPTS.

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Settlements,  
how far affected  
by bankruptcy.

VII. SETTLEMENTS BY AND IN FAVOUR OF PERSONS WHO BECOME BANKRUPT  
OR INSOLVENT.

The title of assignees in bankruptcy, to property which has been the subject of settlement, may arise either from circumstances in the situation of the settlor, affecting his disposing competency, or from a mode of disposition having been adopted by the author of the limitations, whether the bankrupt himself or another, which the policy of the bankrupt laws



forbids. With respect to the former, it will be sufficient to refer to the late bankrupt act, (6 Geo. 4, c. 16), the 73rd section of which provides, "That, if any bankrupt, *being at the time insolvent*, shall (except upon the marriage of any of his children, or for some valuable consideration) have conveyed, assigned, or transferred to any of his children, or any other person, any hereditaments, offices, fees, annuities, leases, goods, or chattels, or have delivered or made over to any such person any bills, bonds, notes, or other securities, or have transferred his debts to any other person or persons, or into any other person's name, the commissioners shall have power to sell and dispose of the same as aforesaid; and every such sale shall be valid against the bankrupt and such children and persons as aforesaid, and against all persons claiming under him."

SETTLEMENTS  
BY AND ON  
BANKRUPTS.

Stat. 6 Geo. 4,  
c. 16, s. 73.

Settlements by  
persons insolvent  
at the time  
declared void.

This act, in making the solvency of the settlor the test of the validity of the settlement, has placed the settlements of traders on the same footing as the statute of 13 Eliz. has placed voluntary alienations in general, according to the construction which the decisions have been shewn, or at least have been contended, to give to that statute. It effects a considerable innovation upon and mitigation of the vacating enactment of the early bankrupt statute of James, which invalidated voluntary settlements that the act of Elizabeth did not affect. *Walker v. Burrows*, 1 Atk. 93.

The general insolvent act, (7 Geo. 4, c. 57), has no provision vacating voluntary alienations, unless in certain cases, where made with the view of fraudulently preferring any creditor; so that the validity of a settlement made by an insolvent debtor must be tried by the general rule.

Settlements by  
insolvent debtors.

But, the question most frequently presented to the attention of the conveyancing practitioner, in regard to the claims of a settlor's creditors, is, how far and by what means the enjoyment of property by any individual can be rendered compatible with its exemption from the operation of his bankruptcy; and this is commonly a subject of anxious interest, where a settlement is made on the marriage of a man already engaged or about to engage in trade.

What limitations of property  
are consistent  
with the bankrupt  
laws.

That property cannot be settled or limited so as to remain in a person after bankruptcy or insolvency, was established in the case of *Brandon v. Robinson*, 18 Ves. 429, where a testator, after disposing of the produce of his real and personal estate among his children, declared that the share of T., one of them, should be laid out on security during his life, and that the dividends and interest should be paid *into his proper hands, or on his proper order and receipt, subscribed with his own proper hand, to the intent that the same should not be grantable, transferable, or otherwise assignable, by way of anticipation of any unreceived payment*; and that, upon his decease, the principal of the share should be paid to such person or persons as in a course of administration would become entitled to any personal estate of T. T. became bankrupt, and his assignee filed a bill against him and the trustees of the will, claiming his share; the

Property cannot  
be limited to a  
man so as to be  
unaffected by  
bankruptcy.

SETTLEMENTS  
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trustees put in a demurrer. Lord *Eldon* said—"There is no doubt that property may be given to a man, until he shall become bankrupt. It is equally clear, generally speaking, that, if property is given to a man for his life, the donor cannot take away the incidents to a life estate; and, as I have observed, a disposition to a man until he shall become bankrupt, and after his bankruptcy is over, is quite different from an attempt to give to him for his life, with a proviso that he shall not sell or alien it. If that condition is so expressed as to amount to a limitation reducing the interest short of a life estate, neither the man nor his assignees can have it beyond the period limited." "This is a singular trust. If upon these words it can be established that he had no interest until he tenders himself personally to the trustees to give a receipt, then it was not his property until then; but, if personal receipt is, in the construction of this Court, a necessary act, it is very difficult to maintain, that, if the bankrupt would not give a receipt during his life, and an arrear of interest accrued during his whole life, it would not be assets for his debts. It clearly would be so. Next—Is there in this will enough to shew, that, as this interest is not assignable by way of anticipation of any unreceived payment, therefore it cannot be assigned and transferred under the commission of bankruptcy? To prevent that, it must be given to some one else; and, unless it can be established that this, by implication, amounts to a limitation, giving this interest to the residuary legatee, it is an equitable interest, capable of being parted with." On these grounds his Lordship overruled the demurrer, intimating, however, that the interest of the assignee was limited to the life of the bankrupt, on whose decease the property belonged to the next of kin.

The doctrine so distinctly maintained by Lord *Eldon*, in the last case, that property may be given to a man, to be divested on bankruptcy (*a*), applies not only to that which he acquires from the bounty of others, but also to what would, but for such act, become his through his marriage; for it has long been settled beyond controversy, that, previously to marriage, property coming from the wife or her friends may be settled on the husband in such manner as to be defeasible on bankruptcy. Thus, in the case of *Lockyer v. Savage*, 2 Stra. 947, where the sum of 4000*l.* was settled by the father of the wife for the use of the husband for life,

Property of the wife may be divested from the husband, on his bankruptcy.

What words create a shifting limitation on bankruptcy.

(*a*) As to what words denote an intention that the interest of a man shall cease or be divested on bankruptcy or insolvency, see *Dommatt v. Bedford*, 3 Ves. 149; 6 D. & E. 684; *Doe v. Carter*, 8 D. & E. 257; *Wilkinson v. Wilkinson*, Coop. 259; S. C. 3 Swanst. 515; *King v. Robinson*, Wightw. 386; *Shee v. Hale*, 13 Ves. 404; *Cooper v. Wyatt*, 5 Madd. 482; *Yarnold v. Moorhouse*, 1 Russ. & M. 364; *Lear v. Leggett*, 2 Sim. 479; S. C. 1 Russ. & M. 690. The principles of these cases are fully discussed, 2 Jarm. Pow. Dev. 275.

with a direction that, if he failed in the world, the trustees should pay the produce to the separate maintenance of his wife and children; and this was held to be good. See also *Ex parte Hill*, 1 Cooke's Bankrupt Law, 232; *Ex parte Benett*, Id. 233. So, in the case of *Ex parte Hinton*, 14 Ves. 598, where, by a settlement previously to the marriage of the bankrupt, the sum of 540*l.*, to which the intended wife was entitled, was assigned to a trustee, with power to lend the money to the bankrupt, to whom accordingly, before the marriage, the trustee lent 500*l.* on his bond, payable absolutely in six months. At the same time, articles were executed, by which it was declared by the parties, that the trustee should receive the principal sum, and apply the interest to the use of the husband during his life, if he should so long continue solvent, *but if he should become a bankrupt*, then for the separate use of the wife for life, and then the principal to the children. The wife died, leaving a child, and the husband became bankrupt. Lord *Eldon* held, that the trustee was entitled to prove the debt, and that the money, being the wife's property, might be limited in this manner to the husband. See also his Lordship's judgment in *Ex parte Hodgson*, 19 Ves. 206.

But, though property of the wife may be divested on bankruptcy, and though property of the husband himself might, immediately on the marriage, have been secured against the claims of creditors, by an absolute trust for the separate use of the wife, yet, it is clear that the latter cannot be so limited or settled as to be held by the husband until bankruptcy, and, upon that event, to be shifted to a trustee for the wife, or any other person; the effect of such a limitation being, it is considered, directly to thwart the operation of the bankrupt laws, by giving a different course or destination to the property, precisely in the event in which those laws have declared that it shall belong to the creditors. This reasoning, pushed to its full extent, would certainly carry the doctrine beyond the limits which have been assigned to it; for, it seems to apply with exactly equal force to the property of the wife; in regard to which, however, it appears to have been thought that it would be improper to deny the power of limiting to the husband a qualified interest in that which, but for the marriage, would never have belonged to him. Authority, indeed, has superseded all reasoning upon this question; for, while the preceding cases have clearly established the legality of the shifting limitation, as applied to the property of the wife, some of those which remain to be stated are equally conclusive in demonstrating its illegality, as applied to the property of the husband.

As a provision against bankruptcy necessarily supposes the embarking in trade, the fact that the husband was not in trade at the time of the settlement, is immaterial. Thus, where A., on his marriage with B., conveyed and assigned certain freeholds and leaseholds to trustees to the use of himself for life, unless he should thereafter embark in trade, and in the life-time of his intended wife become bankrupt; and after his de-

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Property of the husband not allowed to be divested on bankruptcy.

Limitation to take effect on bankruptcy, held to be void, though the husband was not in trade at the time.

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cease or bankruptcy, to the use that B., the intended wife, should receive an annuity, (to be augmented at the decease of C.), during her life for her separate use, and then to the use of trustees for a term of years, upon trust for securing the annuity, and subject thereto to the use of the husband, his heirs, &c. The husband engaged in trade and became bankrupt. The wife claimed her annuity, but Sir *W. Grant*, M. R., decided that she was not entitled; and Lord *Eldon*, on appeal, confirmed the decree, observing, that "though undoubtedly an annuity might have been provided by the settlement for the wife in all events, yet it is not competent to a party, giving a consideration for a contract that is a direct fraud upon the bankrupt laws, to have the benefit of it." *Higinbotham v. Holme*, 19 Ves. 88.

Fact, and not the recital, of ownership, determines the validity of a limitation.

If the settlement really and *bonâ fide* embrace property of the wife, but is framed by mistake so that the settled property appears to proceed from the husband, the Court will amend it according to the fact, moulding the limitation into a valid disposition, though it is in the form of a complete and executed settlement, and not executory in terms. *Higginson v. Kelly*, 1 Ball & Beat. 253, 256; *Ex parte Verner*, Id. 260.

By parity of reasoning, of course, property belonging to the husband would clearly be considered as such in spite of a representation to the contrary in the settlement.

Bond or covenant payable on bankruptcy, void.

An obligation for the payment of money by the husband, is governed by the same principles as a settlement of his property; and therefore, a bond previously to marriage, conditioned for the payment of a sum of money in the event of a bankruptcy, in trust for the obligor's wife and children, is void as against the creditors claiming under the commission. Thus, where a bond was given by a trader on his marriage, conditioned for the payment of 800*l.*, and, by a settlement of even date, it was covenanted that the money should be payable only in the event of the wife surviving the husband, or *in case of his failing in his circumstances*, Lord *Redesdale* held, that this was not a provable debt against the husband's estate. *In re Murphy*, 1 Scho. & Lef. 144.

It should seem, that, where the bond is binding on the bankrupt himself, though void as against the creditors, the obligee ought to be let in to receive a dividend, after the creditors for valuable consideration shall have been paid in full; so that the proper course in these cases is not absolutely to expunge the proof, but to receive it without prejudice, and in subordination to the claims of the other creditors. This was done by Lord *Redesdale*, in the case of Assignees of *Gardiner v. Shannon*, 2 Scho. & Lef. 228, in regard to a bond, which being *after* marriage was merely voluntary.

Contrd, where husband receives a portion.

But, if the husband receives a portion with his wife, the bond or covenant will be considered to the extent of such portion as a settlement of the wife's property, and will be protected accordingly. Thus, in the case



of *Ex parte Cooke*, 8 Ves. 353, where it was stipulated by the marriage articles, that the personal estate of the wife (after deducting a specific sum which was settled), should be received by the husband at the majority of the wife, who was then an infant, on his executing a bond in the penal sum of 10,000*l.*, conditioned to pay 5000*l.* at the end of six months, and it was declared that the bond should be to the intent only, that, in case the obligor should, at any time during his life, become bankrupt or insolvent, or should be insolvent at his decease, the trustees should put the bond in force, and should stand possessed of the money upon certain trusts for the wife and children, but that no suit should be instituted against the husband on the bond, except he should become bankrupt or insolvent; and if he should die without having become bankrupt, &c., the bond should be delivered up, and the 5000*l.* be considered part of his estate. The husband had a large estate with his wife; he afterwards became bankrupt, and the trustees now applied for permission to prove the 5000*l.* against the estate; Lord *Eldon* ordered that they should be permitted to prove *so much of that sum as the value of the real and personal estate of the wife received by the husband amounted to.*

Where, by the condition of the bond, the money is payable at a fixed period, but under the trusts declared of the money, a life interest is limited to the husband, determinable on bankruptcy; the doctrine in question has no farther effect than, by vacating the determining proviso regarding the interest, to render the husband's life interest absolute. It neither invalidates the bond, nor affects the ulterior limitations of the trust money. Thus, In the Matter of *Meaghan*, 1 Sch. & Lef. 179, where, upon the marriage of A., 600*l.*, part of the portion of the wife, was paid to him upon his executing a bond and warrant of attorney in the penal sum of 2000*l.*, conditioned for the payment of 1000*l.*, with interest, within six months from the date; and it was provided by the settlement, that the money should be held in trust for the husband while solvent, and after his death or insolvency, for the wife for her separate use, and then for the children. The husband became bankrupt, the trustee proved the 1000*l.*, and a petition was now presented to the Court of Chancery in Ireland, to expunge the proof. Lord *Redesdale*, C.—“This is a bond, which is a debt due, and nothing fraudulent is suggested but one stipulation, namely, as to the interest in case of insolvency. In England, where a provision of this kind is confined to the property of the wife, it is considered fair; but when it goes beyond that, and attaches on the property of the husband, it is held to be fraudulent, because no bounds can be set to it: if a trader can make a provision of this sort to the amount of 1000*l.*, he may do so to the amount of 100,000*l.*, and so may stipulate on his marriage to take all his property out of the hands of his creditors by charging it contingently, with payment of interest for his wife and children, as a maintenance for them, though in

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Bond not invalidated by a partial vacating of the trusts of the money.

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effect a provision for himself. In this case, the interest, so far as the dividend on 600*l.*, (the wife's fortune), must be paid to the separate use of the wife according to the settlement: *but as to the dividend on the remaining 400*l.*, it falls within all the cases.*" The order of the Court directed, that the proof of debt for 1000*l.* should stand, but that the trusts of the settlement, so far as they gave the interest of 400*l.*, part of the 1000*l.*, to the wife and children during the life of the husband, on his becoming insolvent, were void; and that the interest on the dividends to be received upon the 400*l.* was to be paid to the assignees during the life of the bankrupt, upon whose death the wife and children would become entitled.

Construction,  
where the hus-  
band's agree-  
ment to refund  
is confined to  
certain property.

Where the husband receives with his wife monies derived from two distinct sources, a stipulation that he shall refund in the event of bankruptcy, confined to one of those properties, of course authorizes no claim as to the other. Thus, in the case of *Ex parte Hodgson*, 19 Ves. 206, where the bankrupt on his marriage had given his bond to a trustee in the penal sum of 700*l.*, reciting that, in consequence of the property to which his intended wife was entitled under the will of her father, it was agreed that after the marriage, in case of the insolvency of the husband during their several lives, it should be lawful to the trustee to come in under any assignment or commission of bankruptcy as a creditor, and to make proof of so much as the husband should have received as the wife's share in the personal estate of her father, and receive dividends, &c., which dividends should be applied for the separate use of the wife. Lord Eldon decided, that the trustees were entitled to prove against the estate of the husband, who had become bankrupt, a legacy of 500*l.*, which he had received from the estate of the wife's father; but not the amount of a legacy which he had received from the estate of her brother.



JOINTURES IN  
BAR OF DOWER.

Origin of jointures.

VIII. JOINTURES IN BAR OF DOWER, AND HEREIN OF STAT. 11 HEN. 7, c. 20.

In consequence of the doctrine which obtained previously to the statute of uses, that a widow was not dowable of a use, dower had ceased to be the ordinary provision of married women, for whom, therefore, it became necessary to provide in some other mode. The manner of effecting this commonly was, by procuring the husband to take a conveyance to himself and his intended wife jointly, which, on his decease, survived to the widow. Hence arose the term *jointures*. As the statute of uses, (27 Hen. 8, c. 10), by transferring the possession to the use, would have rendered lands generally liable to dower, it was deemed advisable to accompany this enactment by some provisions for facilitating the barring of dower by an ante-nuptial (and, subject to rejection on discovery, even a post-nuptial) settlement, which could not be done at common

law, for two reasons; 1st, because the wife had no title of dower at the time; 2ndly, because no collateral satisfaction could bar any right or title of any inheritance, or freehold. *Vernon's case*, 4 Rep. 1 b. To remedy this inconvenience, the stat. 27 Hen. 8, c. 10, s. 6, (the statute of uses), enacted, "That whereas divers persons have purchased, or have estate made and conveyed of and in divers lands, tenements, and hereditaments, unto them and to their wives, and to the heirs of the husband, or to the husband and to the wife, and to the heirs of their two bodies begotten, or to the heirs of one of their bodies begotten, or to the husband and to the wife for term of their lives, or for term of life of the said wife; or where any such estate or purchase of any lands, tenements, or hereditaments, hath been or hereafter shall be made to any husband and to his wife, in manner and form expressed, or to any other person or persons, and to their heirs and assigns, to the use and behoof of the said husband and wife, or to the use of the wife, as is before rehearsed, for the jointure of the wife; that then, in every such case, every woman married, having such jointure made, or hereafter to be made, shall not claim, nor have title to have any dower of the residue of the lands, tenements, or hereditaments, that at any time were her said husband's, by whom she hath any such jointure; nor shall demand nor claim her dower of and against them that have the lands and inheritances of her said husband; but if she have no such jointure, then she shall be admitted and enabled to pursue, have, and demand her dower by writ of dower, after the due course and order of the common laws of this realm; this act, or any law or provision made to the contrary thereof notwithstanding. Sect. 7. *Provided alway*, that if any such woman be lawfully expelled or evicted from her said jointure, or from any part thereof, without any fraud or covin, by lawful entry, action, or by discontinuance of her husband, then every such woman shall be endowed of as much of the residue of her husband's tenements or hereditaments, whereof she was before dowable, as the same lands and tenements so evicted and expelled shall amount or extend unto. Sect. 9. *Provided also*, that if any wife have, or hereafter shall have, any manors, lands, tenements, or hereditaments, unto her given and assured after marriage, for term of her life, or otherwise in jointure, except the same assurance be to her made by act of Parliament, and the said wife after that fortune to overlive her said husband, in whose time the said jointure was made or assured unto her, that then the same wife so overliving shall and may, at her liberty, after the death of her said husband, refuse to have and take the lands and tenements so to her given, appointed, or assured during the coverture, for term of her life, or otherwise in jointure, except the same assurance be to her made by act of Parliament, as is aforesaid, and thereupon to have, ask, demand, and take her dower by writ of dower or otherwise, according to the common law, of and in all such lands, tenements, and hereditaments, as her husband

JOINTURES IN  
BAR OF DOWER.

Stat. 27 Hen. 8,  
c. 10.

Reciting that  
divers lands are  
conveyed to  
husband and  
wife, &c.

Women having  
such jointure as  
is before describ-  
ed, not to claim  
dower.

Proviso in case  
of eviction.

Widows may  
refuse jointure  
made to them  
after marriage.

JOINTURES IN  
BAR OF DOWER.Remarks on the  
statute.

was and stood seised of any state of inheritance, at any time during the coverture; any thing contained in this act to the contrary thereof notwithstanding."

In order to constitute a legal bar to dower, a jointure must be strictly conformable to the statute; not, indeed, that it need be one of the estates therein enumerated, for the cases put are intended to be exemplary or illustrative only, and not exclusive; hence, an estate limited to the wife solely for life or in fee, is sufficient, though all the jointures specified in the statute, at least in the first clause of it, are joint limitations to the husband and wife. *Vernon's case*, 4 Rep. 1; *Ashton's case*, Dy. 228; *Dennis's case*, Id. 248 b. Still the question, as to what is a good statute jointure, lies in a very narrow compass as compared with the question, what is a good equitable jointure; for it is to be observed, that equity taking for its guide the principles of the statute, has by a series of decisions adjudged dower to be completely barred in equity in a great variety of cases, in which the jointure would have been no legal bar. Referring, therefore, to Lord Coke, Co. Litt. 36. b., and succeeding writers, Atherl. Sett. 501, for a full inquiry into the question, what is a good statute jointure, I proceed at once to the consideration of equitable jointures, touching—

Infants may be  
barred by a  
jointure.

*First*—On the important question, which applies equally to both species of jointures, whether they are binding on infants. This point arose in the case of *Drury v. Drury*, 2 Ed. 39, which was as follows:—By a settlement executed previously to the marriage of A. and B., it was agreed, (among other things), that B., in case she should survive A., should have an annuity of 600*l.* for her life for her jointure and in satisfaction of dower, and also in satisfaction of any distributive share she might become entitled to in the personal estate of A.; and A. covenanted with the trustees to pay the jointure annuity accordingly. At the time of the execution of this settlement, B. was under age. She survived her husband, and now claimed as his widow her dower and share of his personal estate against the children. Lord *Northington*, after much consideration, held, that the widow was not barred of her jointure by the settlement, for the following reasons:—*1st*, that the wife, being a minor at the marriage, was under a disability to deprive herself of dower at the common law;—*2ndly*, that there were no express words, or any hint in the statute of an intention, to take away the protection extended by law to infancy, either by enabling the infant herself to agree to the jointure, or the husband to impose one on her *nolens volens*; and even if the law were otherwise, his Lordship thought—*3rdly*, that the present jointure was destitute of all the substantial qualities required by the statute, the wife having no real security for the payment of the jointure. Against this decree, the plaintiffs appealed to the House of Lords, when that House took the opinion of the Judges, four of whom were of opinion that the dower was barred; and three, that it was not: and after an argument from Lord *Hardwicke* and Lord *Mansfield*, both of whom concurred



JOINTURES IN  
BAR OF DOWER.

with the majority of the Judges, the House reversed the decree of the Court below, thereby establishing beyond all further controversy, that dower may be effectually barred by a jointure made on a female infant before marriage. In the course of his speech Lord *Hardwicke* observed—"Every *certain* provision with consent of the wife, parents, or guardian, though not a jointure within the statute 27 Hen. 8, is good in equity. This is built on maxims which regard the substance, and not the forms. What, for good considerations is agreed to be done, is considered as done, and allowed all the consequences and effects as if actually done; especially if the condition of the parties is changed, for that cannot be rescinded; so what is fairly done before, ought to be established. This jurisdiction of equity is grown up from necessity, from the change of circumstances and times, and to comply with the occasions of families, and the exigencies of mankind. As property stood at the time of the statute, personal estate was then of little or trifling value; copyholds had hardly then acquired their full strength, trusts of estates in land did not arise till many years after; (I wonder how they ever happened to do so). But the chief kind of property then regarded, was freehold estate in land, and so the statute applied to that only. But how many species of property have grown up since by new improvements, commerce, and from the funds. Equity has therefore held, that where such provision has been made before marriage, out of any of these, she shall be bound by it. Consider, how many jointures there are now made on women out of the funds, and none of them within the statute 27 Hen. 8. So, multitudes of jointures out of trust estates, not one of them within the statute; yet, equity has always supported them. So, also, of copyhold lands." It is important to observe, that though the covenant for securing the annuity in this case might seem to be personal only, yet it was not so considered by those who maintained the sufficiency of the jointure. Lord *Hardwicke*, in particular, laid much stress on the argument, that the covenant entitled the jointress to a real security, as will appear by an additional extract from his judgment. "But, it has been said," continued the noble and learned Judge, "the agreement in the present case was originally vitious, by reason of particular defects in it: that nothing certain is contained, no particular lands specified, and no remedy for the wife to compel the husband in his life. But, the cases I have mentioned, and also the case upon Lord Lechmere's marriage articles (*a*), where it was only a general covenant, are all answers to the objections. And, besides, there are two other answers:—1st, if there had been danger of the husband's dissipating, and he had spent this equitable jointure; that would have been an eviction in equity, and consequently would have given her right to dower, like the case of an eviction at law; for, equity pursues the reason of the law. 2ndly, but he could not have spent it, *i. e.* his real estate;

Lord *Hardwicke's* judgment in the case of Earl of *Bucks* v. *Drury*.

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(a) As to which, *vide post*.

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for, if any one was about to purchase, he would certainly have asked, whether the husband was married, if his lady was jointured? and, when this was produced, would have seen a settlement, or insisted on a settlement being made, or that the wife should join in a fine. Another objection was, that the covenant is too short, but the agreement is general; whereas, the covenant is, that his heirs &c., after &c., shall pay: therefore, that as there is no covenant for himself, there was no remedy to compel him in his lifetime. But I differ from that: for, I think, upon the first clause, that she might by her next friend have brought a bill to compel him; because it is a general agreement, that she should have the annuity for, and in the name of, her jointure, which are the proper legal words, and the language of pleading. Then, has he not covenanted in every circumstance to make a jointure, one property of which is to take effect immediately in possession on the death of the husband, which could not be unless it was settled in the life of the husband." *Earl of Buckinghamshire v. Drury*, 2 Eden, 60.

Remarks upon  
the case of *Earl  
of Bucks v.  
Drury*.

Infant not barred by an estate not falling into possession at the husband's decease.

This case has attracted much observation, and some censure; but the high authority of the Court from which it proceeded insured acquiescence in its doctrine, that an infant may be barred by a proper jointure. What is such a jointure is the point next to be considered. It is clear that it must absolutely take effect in possession at the husband's decease, and not be subject to any contingency. Thus, in *Carruthers v. Carruthers*, 4 B. C. C. 500, where, previously to the marriage of A. (the intended husband) with B., who was an infant, an estate, which was in the possession of A.'s mother, was settled *on the mother for life*, remainder to A. for life, remainder, if she should survive the mother and husband, to B. for life, as part of the provision, in bar and satisfaction of dower. The other part of the provision appears to have been made by the uncle of the husband surrendering copyhold *to the use of himself for life*, remainder to the husband for life, remainder to the wife for life, if she should so long continue a widow (a). The uncle (the prior tenant for life of the copyholds) died in the lifetime of the husband; but the mother (the prior tenant for life of the freeholds) survived him; and the question was—Whether, under these circumstances, the wife was bound to take these provisions in bar of dower? Sir *R. P. Arden*, M. R., decided in the negative. "I wish to know," said his Honor, "what fair conclusion can be drawn from *Drury v. Drury*, that there is any equity by which a woman would be obliged to take an uncertain interest in bar of dower. Here, *non constat* that one of the estates will ever be hers in possession; the other has fallen in, if she chooses to take it. Suppose she had had a jointure which turned out to be bad—I mean, which would not have af-

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(a) It is laid down in 4 Rep. 3, that an estate during widowhood is a sufficient bar, as it cannot be determined unless by death, without the widow's own act; but, clearly, it is not equally beneficial with dower.

forded her the same advantage which she would have had from her dower—would that have bound her? In *Drury v. Drury* she has as certain a provision as in her dower; therefore, I think *Drury v. Drury* decides, that where the provision is equally certain with the dower, it is good. Would she have been bound by this in her husband's lifetime, whilst both the tenants for life were alive? *If it is good at all, it must be so from the making of the settlement (a)*; but she could not be bound then. An equitable provision which a woman takes must be as certain a provision as her dower, not an uncertain provision which she may never enjoy. I do not say, that if she had been adult she might not have bound herself. She might have taken a provision out of the personal estate, or she might have even taken a chance in satisfaction for her dower, acting with her eyes open; *but an infant is not bound by a precarious interest.*"

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The next case raising the point under consideration is *Chitty v. Chitty*, 3 Ves. 545, where, by a settlement made previously to the marriage of A. and B., A. assigned a leasehold messuage to trustees, in trust for himself for life, and then in trust for B., his intended wife, for life, with limitations over, and it was declared that the provision made for B. should be in bar of dower; one of the questions in the case was, whether B., who was an infant at the time of her marriage, was barred of dower by this settlement. The Master reported that she was; and the Lord Chancellor (*Loughborough*) decided accordingly, without hesitation and without remark.

Infant barred of dower by a settlement of leaseholds.

An instance of a provision ineffectual on account of its precariousness is afforded in a subsequent case before the same judge; where, upon a marriage between A. and B., the latter an infant, the settlement provided, that, in case the wife should survive the husband, and there should be no issue at his decease, she should be entitled to receive to her own use not only such share of his personal estate as she would be entitled to by the custom of London, as a freeman's widow, before the 11th of Geo. 1, but that she should have his household goods and furniture; and that, if there should be any child living, then that she should have the household goods, and the residue of the personal estate should go between her and the children, according to the custom of London. And it was covenanted, that if the husband should invest any part of his personal estate in the purchase of lands, the wife surviving him should have the same share in the lands as she would have been entitled to in the personal estate with which it was purchased; and it was provided, that the provision thereby made should be in satisfaction of dower. A. became bankrupt, having before his bankruptcy purchased certain freehold estates. One of the questions was—Whether the wife was dowable? It was con-

Provision out of the personal estate of the husband, at his decease, not sufficient.

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(a) Compare this position with *Corbet v. Corbet*, *post*, p. 96.

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BAR OF DOWER.

Jointure originally precarious, becoming certain in event, held to be good.

tended, for the assignees, that she was not; but the contrary was insisted on for her, on account of her infancy at the time of the settlement, and the precariousness of the provision; and of this opinion, it should seem, was the Lord Chancellor, as he decided in her favour, but without stating the particular grounds of his decision. *Smith v. Smith*, 5 Ves. 189.

Although, in some of the early cases, it is strongly insisted that the jointure must be good *ab initio*, (see *Vernon's case*, 24 Rep.; *Wood v. Shirley*, Cro. Jac. 488), and the same doctrine, we have seen, was laid down by Lord *Alvanley*, in the case of *Carruthers v. Carruthers*; yet, in a recent case, a jointure originally precarious, which in event had become certain, was held to be a good bar. Thus, where A. was tenant for life, with a power to jointure not exceeding 10*l.* yearly for every 100*l.* he should receive with his wife; he married a woman who had no fortune, and, by an indenture to which her father and herself were parties, granted a rent-charge of 100*l.* a-year to trustees, for the life of and in trust for the wife, in satisfaction of her dower, secured by a demise made in professed execution of his power. Finding this settlement to be void, A. procured the remainder-man to confirm it (*a*); which confirmation, however, might have been rendered ineffectual by the birth of male issue of A., by which event the prior limitation would have taken effect. A. died without such issue, and his wife claimed dower on the ground that she was an infant at the time of the marriage, and therefore was not bound by a precarious jointure such as the present. But the Vice Chancellor (Sir *J. Leach*) held that the dower was effectually barred. His Honor observed—"In the present case, the professed jointure is equitable, and not legal, being given to trustees for the benefit of the wife, and not directly to the wife herself. In order to try the application of *Carruthers v. Carruthers*, let it be assumed that the professed jointure was legal, and given directly to the wife herself; and then it is to be asked—Whether, this being a legal jointure, the plaintiff could, under the actual circumstances, renounce it, and claim her dower? Now, the 7th section of the statute of Hen. 8 expressly provides, that a wife evicted of her jointure shall be remitted to her dower only *pro tanto*. If this, therefore, had been a legal jointure, and the settlement had wholly failed as to the particular lands, by the defect of title in the husband, the plaintiff could only have claimed dower to the extent of 100*l.* a-year; and consequently, when the settlement does not fail by reason of subsequent confirmation, if this were a legal jointure she must be bound by it. If this jointure would, under the circumstances, have bound the plaintiff by the express provisions of the statute, if it had been legal, without the assent of her father, then the only question here is, whether the assent of the father shall remove the objection which arises under the statute, from the mere

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(*a*) Was it not, therefore, in effect, a post-nuptial settlement?



equitable quality of the jointure; and all the authorities concur, that the assent of the father or guardian shall have that effect. There is another view to be taken of this case:—A grant of a rent-charge upon particular lands, in consideration of an intended marriage, is, in equity, if the grantor be evicted from the particular lands, a general agreement to grant a rent-charge of that amount, to be issuing out of some lands. And it is decided in *Drury v. Drury*, that such a general agreement will, in equity, bind a female infant, where the parent or guardian assents to it." *Corbet v. Corbet*, 1 Sim. & Stu. 620.

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The observations of the Vice-Chancellor on the effect of the father's concurrence, import that it removed any objection to the equitable quality of the jointure; which it seems difficult to understand. If the jointure wanted any of its essential properties, it is apprehended, that the concurrence of the father would not make it a good bar of dower, even in equity; and if it did not, his non-concurrence would not be material; for, in the celebrated *Drury* case, which is cited by his Honor, *no person was party to the settlement in the character of a guardian*; though the contrary might have been inferred from the argument (already quoted) of Lord *Hardwicke*, who always appears to have attached an undue weight to the concurrence of parents and guardians. (*Vide ante*, p. 31). The influence which the *event* was allowed to have on the adequacy of the bar, in *Corbet v. Corbet*, leaves little room to doubt that the Courts (applying the principle to the converse case) would hold, that a jointure provision, seeming to be originally well secured and sufficient, might subsequently fail to exclude the dower in event; and the clause in the statute of jointures, reviving the dower in the event of the jointress's eviction, seems to supply an authority for such a principle. This consideration should induce caution in relying on provisions, which, from the nature of the property, or from a breach of duty on the part of trustees, are liable to failure. Indeed, where there is any real hazard, a purchaser frequently acts judiciously in levying a fine to extinguish dower, at his own expense.

Remarks on the  
case of *Corbet*  
*v. Corbet*.

But, the precariousness of a jointure-provision is only an objection to its sufficiency in the case of infants; for, in equity, dower may be barred by any provision which the wife, being at the time competent to bind herself, chooses to accept in satisfaction, whether such acceptance be evinced before the commencement or after the determination of the coverture. *Glover v. Bates*, 1 Atk. 439; see also *Smith v. Low*, Id. 490. Indeed, there can be little doubt (though no case, in its actual circumstances, has reached this point) that dower, like every other interest, vested or contingent, of the wife, may be bound by her express contract, while free from the disabilities of minority and coverture, without any provision at all. The intention, however, that the provision shall be accepted in satisfaction, must be distinctly apparent on the face of the instrument, parol evidence thereof being inadmissible; *Tinney v. Tin-*

Adults may be  
barred by a pre-  
carious provi-  
sion.

Intention to ex-  
clude dower  
should be clearly  
apparent.

JOINTURES IN  
BAR OF DOWER.

ney, 3 Atk. 8; but technical words are not essential for this purpose. Thus, where a bond was given to secure a sum of money for the wife's *livelihood and maintenance*, Lord King, reversing a decree of Sir J. Jekyll, at the Rolls, held that the dower was barred. *Vizard v. Longdale*, 3 Atk. 8. Where a leasehold estate was settled on the intended wife, in bar of her dower, and *as a provision for the wife*, Lord Thurlow held that this was not a bar to the wife's claim of thirds. The husband had no real estate. *Creswell v. Byron*, 3 B. C. C. 362.

Effect of failure of a rent-charge accepted by an adult.

It should be observed, that, although the statute has provided, that, in the event of eviction from the jointure lands, the wife will be entitled to dower, yet, Sir Thomas Plumer, V. C., expressed an opinion, that, where an adult female accepted a rent-charge in lieu of dower, she could not claim dower, even though she were evicted, for she ought to have seen that she had a good title before she agreed to accept it. On this ground his Honor decided, that a purchaser was not entitled to have a fine levied or to inspect the title to the jointure lands. *Simpson v. Gutteridge*, 1 Madd. 609. The doctrine is questionable, as it almost neutralizes this provision of the statute, by confining it to the case of infants. It is not denied, indeed, that the wife, being adult, might waive the right of resorting to her dower in case of eviction; but the question would be, whether the ordinary terms in which these clauses are expressed indicate such an agreement. The wife may have forborne to inspect the title, in reliance on the eviction clause of the statute.

Jointure need not proceed from the husband, but the wife must be a party;

It is not necessary that the jointure should proceed from the husband; it may be made by his father or any of his other relations. *Ashton's* case, Dy. 228, a. But, let the jointure proceed from whomsoever it may, the wife must be a party; for, it is to be observed, that, in all the preceding cases in which a settlement on an infant was held to be a sufficient bar of dower, the wife herself was a party. The contrary, indeed, was decided in the case of *Jordan v. Savery*, 2 Eq. Ca. Ab. 101, where J. S., previously to his marriage, covenanted to settle all his lands to certain uses, part being for the use of himself and wife for life; and it was provided that the land settled on the wife should be in lieu of her customary estate; Lord King is said to have determined that the wife was barred of her free-bench in copyholds, although she was an infant, *and not a party to the articles*; but, it seems that she had entered upon the jointure lands. To hold that a woman may be barred of dower by a jointure made without her consent, or even knowledge, would be flagrantly unjust, especially when it is considered that the statute does not fix the relative value which the jointure should bear to the dower which it bars. But, if the wife's assent be proved, the fact of her not being a party probably would be immaterial, especially if the form of the instrument did not properly admit of her being so. In the case of *Estcourt v. Estcourt*, 1 Cox, 20, the husband gave a bond to the wife's mother, conditioned to settle lands of 500*l.* *per annum* on the wife, in lieu of

—or at least assenting.

dower; during the coverture the husband made a settlement pursuant to this bond. The wife survived the husband, and now claimed her dower, alleging that she was not a party to the bond, and that her execution of the settlement while under coverture did not bind her. Lord *Alvanley*, M. R., held, that, as the wife, from all the circumstances, must be considered as approving of the bond, she was concluded. In this case the lady was an adult; being, therefore, competent to bind herself, the only question was, whether she *had* done so.

JOINTURES IN  
BAR OF DOWER.

*Restrictions on a Woman's alienation of Lands derived ex Provisione Viri.*

SETTLEMENTS  
EX PROVISIONE  
VIRI.

The stat. 11 Hen. 7, c. 20, enacts—That any woman who should have any estate in dower, or for life, or in tail, jointly with her husband, or only to herself, or to her use, in any manors, lands, tenements, or other hereditaments *of the inheritance or purchase of her husband, or given to the husband and wife, in tail or for life, by any of the ancestors of the husband, or by any other person seised to the use of the husband, or of his ancestors*, and should, being *sole*, or with any after-taken husband, discontinue, alien, release, or confirm with warranty, or by covin suffer any recovery of the same against them or any of them, or any other seised to their or either of their use; all such recoveries, &c., should be utterly void and of none effect. And that it should be lawful to every person to whom the interest, title, or inheritance, after the decease of the women, should appertain, to enter and enjoy in such manner as he or they should have done if no such discontinuance, &c., had been made. And, if any of the said husbands and women, or any other seised to the use of them, should make any such discontinuance, &c., that then it should be lawful to the person or persons to whom the said manors, &c., should belong after the decease of the said women, to enter and enjoy according to their title and interest, as against the said husband during his life. It is then provided, that the said women, after the decease of their husbands, may re-enter; but, if they were *sole* at the time of the discontinuance, &c., they are wholly excluded. It is also provided, that the act shall not extend to any recovery or discontinuance had where the heirs next inheritable to the said women assent thereto, the assent being of record or inrolled; and that it shall be lawful to every such woman to give, sell, or make discontinuance for term of her life only.

Stat. 11 Hen. 7,  
c. 20.

Alienations by  
women, of lands,  
the inheritance  
&c. of the hus-  
band, void.

Rights of entry  
after the decease  
of the wife, &c.

Provisoes.

The reader will perceive that the Legislature has not contented itself with vacating the act which it prohibits, but has gone on to impose the penalty of forfeiture—displaying, however, the usual tenderness towards coverture, by restricting this penal consequence, in the instance of an alienation by a married woman, to the estate of the concurring husband, who is regarded as the real offender. A very brief statement of the decided points on the statute is all that here will be attempted; because

Remarks upon  
the statute.

SETTLEMENTS  
EX PROVISIONE  
VIRI.

Statute extends  
to equitable in-  
terests ;

—not to copy-  
holds.

Purchase for  
money when  
within the act.

Brother held to  
be an "ances-  
tor."

the subject, though important, is not one of every-day occurrence, and has been very fully discussed by other writers. See *Gilb. on Uses*, by Sugd. 339; 1 *Rop. Husb. & Wife*, p. 587.

The statute extends to equitable interests; and, therefore, where the husband and wife joined in settling land of the husband to the use of A. and his heirs, in trust for the wife in tail, with remainder to the husband in fee, the heir of the husband was held to be entitled against a person claiming under a common recovery suffered by the wife. *Symson v. Turner*, 1 *Eq. Ca. Ab.* 220, pl. 1.

The act, however, does not embrace copyholds, because it is said that, conferring a right of entry, it would have the effect of introducing persons into the tenancy, to the prejudice of the lord. *Harrington v. Smith*, 2 *Sid.* 73; also, *Stockbridge's case*, *Cro. Eliz.* 24. But, though the point is well settled, the reason is unsatisfactory; for, how would the lord be prejudiced, as the remainder-man or reversioner so entering would be his tenant?

If the husband buys an estate, which he procures to be conveyed to himself and his wife in tail, this is a "purchase" within the statute, and the wife surviving him cannot bar the entail; *Stockbridge's case*, *Cro. Eliz.* 24; unless, indeed, the purchase is made with money advanced by the wife's relations. *Watkins v. Lewis*, 1 *Russ. & M.* 377 (a). It is clear, that a marriage portion paid to the husband, by or on the behalf of the wife, equal to the value of an estate at the same time settled by him on the wife, does not render her the purchaser of such estate, so as to be deemed the settlor, the money being considered as paid on account of the marriage, and not as the price of the estate. *Villers v. Beaumont*, *Dyer*, 146 a; *S. C. Moor.* 93, pl. 231; *Piggott v. Palmer*, *Moor.* 250, pl. 398; *Kirkman v. Thompson*, *Cro. Jac.* 474. So, of course, if the estate proceeds from the wife or her family, the case is not brought within the statute, by the fact of a sum of money being paid by the husband or his family, though the settlement is expressed to be in consideration of the money, as well as of the marriage, and though, in *Kynaston v. Lloyd*, next cited, it is rather to be inferred that the money was paid by the husband to the wife's father, who was the settlor, for his own benefit. *Kynaston v. Lloyd*, *Cro. Jac.* 624; see also *Copland v. Pyatt*, *Cro. Car.* 244.

A brother of the husband (of the whole blood) is one to whose settlement the statutory protection is extended, he being an "ancestor" within

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(a) In this case the purchase was an equity of redemption; and though the whole sum actually paid to the vendor was advanced by the wife's sister, yet, the husband, it should seem, was liable for the mortgage debt, which constituted the remainder of the purchase-money. This would seem to let in the principle of the case of *Laughter v. Humphrey*, stated next page.



the meaning of the statute; *Sharington v. Strotton*, Plowd. 300, 307; but, if the donor is a stranger in blood to both the husband and wife, the settlement, being induced by friendship and kindness to *him*, will not be protected. *Ward v. Sudman*, Moor, 683, pl. 943.

Where the settled estate before the marriage belonged to the husband and wife respectively, the wife will be restrained from alienation, *quoad* the ante-nuptial interest of the husband, but no farther. *Laughter v. Humphrey*, Cro. Eliz. 524; see also, *The Queen v. Savage*, Moor. 715, pl. 1000.

In the case of *Foster v. Pitfall*, Cro. Eliz. 2, it was assumed, that a devise by the husband to the wife is within the statute; but the contrary is laid down in *Dennis's* case, Dyer, 248, where it is observed, that a devise to the wife is a benevolence and not a jointure; and certainly, looking at the several clauses of the statute, there is strong ground to contend that a testamentary disposition by the husband was not in the contemplation of the Legislature. The point could only arise where the remainder or reversion expectant on the wife's estate is devised, or rather is left to descend to the heirs of the husband; for, it is to be observed, that, if lands are limited to the wife in tail, with *remainder to a stranger in fee*, the remainder is not protected by the statute, which was passed for the benefit only of the husband and his heirs, and not of strangers; so that the wife's alienation is unrestrained. *Foster v. Pitfall*, Cro. Eliz. 2. *A fortiori*, it is clear that the statute does not extend to estates in fee limited to the wife. 4 Rep. 3 b; Dame *Dennis's* case, Dyer, 248.

Another result of the same principle is, that alienations by the wife, conjointly with the husband, are not touched by the statute. *Kirkman v. Thompson*, Cro. Jac. 474; *Whitfield v. Faussett*, 1 Ves. sen. 391. So, a common recovery suffered by a widow, tenant in tail, *ex provisione viri*, with the concurrence of the expectant heir in tail, is unquestionably valid. *Curtis v. Price*, 12 Ves. 89. The reason assigned by Sir *W. Grant* for his decision in this case was, that the statute being made for the protection of the interests of the issue, could not apply when the heir in tail himself joined; but, with deference, it is submitted that this is scarcely accurate, because the object of the statute was not the preservation of the wife's entail, but of the husband's remainder, as is demonstrated by the doctrine (already noticed) which negatives its application when the remainder is limited to a stranger. The true reason, it is submitted, is, that the case falls within the proviso of the act validating the alienation, where the "heir next inheritable" assents.

The statute, it will be observed, expressly empowers the wife to alien for the term of her own life; but a lease for the life of another, though without warranty, has been decided to be invalid. *Lynch v. Spencer*, Cro. El. 513. So, of a lease for one thousand years, reserving the ancient rent. *Piggott v. Palmer*, Moor. 250, pl. 398.

SETTLEMENTS  
EX PROVISIONE  
VIRI.

Case in which  
the statute operates  
*pro tanto*.

*Semble*, a devise is not within the statute.

Limitations to strangers not within the statute.

Junction of the husband or heir in tail validates the alienation.

TRUSTS FOR  
SEPARATE USE.IX. TRUSTS FOR SEPARATE USE, AND PROVISIONS FOR MARRIED WOMEN IN  
GENERAL.

Since Courts of equity have recognised the existence of the separate property of married women, they have been frequently called upon to decide various questions relating to it; for instance, by what words such trusts are created—what is the consequence of creating the trust without naming a trustee—whether a power of alienation is incident to such separate ownership—how far such power may be restrained—and, lastly, by what kind of engagement the separate property of a *feme covert* is liable to be bound. First in order and importance is the question—What expressions create a trust for separate use, which will best be answered by a summary statement of the cases.

What expressions create a trust for separate use.

“To be at her own disposal.”

In *Kirk v. Paulin*, at the Rolls (1737), 7 Vin. Ab. 95, J. S. by his will bequeathed household goods, &c., to his daughter A., then the wife of B., *to be at her own disposal*, and to do therewith as she should think fit; the bequest was held to be for her separate use. Similar words occurred, and a similar decision was made in the recent case of *Prichard v. Ames*, Turn. & Russ. 222.

“For the livelihood” of the wife.

In *Darley v. Darley*, 3 Atk. 399, Lord Hardwicke ruled that an estate given to a husband for the *livelihood* of the wife created a trust for her separate use.

Receipt to be a discharge.

In *Lee v. Priaux*, 3 B. C. C. 381, the trust in a will was to pay certain dividends to A.; but the trustee was not to “be troubled to see to the application of any sum or sums paid to the said A., *but her receipt in writing should be a sufficient discharge*” to the trustee for the sums so paid. Lord Alvanley, then M. R., was of opinion that the words were sufficient to give an absolute power to the wife, independently of her husband.

Direction to deliver legacy, on the demand of the legatee.

In *Dixon v. Olmuis*, 2 Cox, 414, a bequest to the testator's niece, Lady W., of certain securities owing from Lord W., with a direction *that they should be delivered up to her whenever she should demand or require* the same, was held by Lord Loughborough to be a gift to her separate use, because Lord W. could not have obtained them from the executors without a demand made by Lady W. The same principle evidently applies to a direction that a *feme* legatee shall not sell without her husband's consent. *Johnes v. Lockhart*, 3 B. C. C. 383, n., Belt's edit.

“To pay into the proper hands.”

In *Hartley v. Hurler*, 5 Ves. 540, Lord Alvanley, M. R., held that a trust to pay into the *proper hands* of A. was a trust for separate use.

“For her own sole use.”

In *Adamson v. Armitage*, Coop. 283; 5 Ves. 416, Sir W. Grant decided, that a bequest to A. of a sum of money to be vested by the executors in the hands of trustees, the income arising therefrom *to be for her own sole use and benefit*, was an absolute bequest of the property, exclusive of the marital right.

So, in *Ex parte Ray*, 1 Mad. 199, certain sums of stock were by a marriage settlement vested in the hands of trustees, in trust to pay the divi-

dends to A., the intended wife for life, for her separate use, and, after her decease, to permit B., the intended husband, to receive the dividends during his life, and, after his decease, in trust for the children of the marriage, and, in default of children, in trust *for the sole use and benefit* of A., her executors, administrators, and assigns. Sir *T. Plumer*, V. C., held that the words "sole use" meant separate use, and, consequently, that A. had the power of disposing of the trust property by will, and that the circumstance of other words being elsewhere superadded to "sole," in creating a similar trust, was not material.

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SEPARATE USE.

For the sole use and benefit.

But, of course a trust or direction to pay the rents or income of property real or personal, simply to a married woman for life, creates no trust for her separate use; *Brown v. Clark*, 3 Ves. 166; *Lumb v. Milnes*, 5 Ves. 517; and the addition of the words "for her own use and benefit" has been repeatedly held not to vary the construction; *Wills v. Sayer*, 4 Madd. 409; *Roberts v. Spicer*, 5 Madd. 491; and which, it should be observed, is also wholly uninfluenced by any extrinsic circumstances in the situation of the *cestui que trust*; as, that of her being indigent, or living separately from her husband, or both. *Palmer v. Trevor*, 1 Vern. 264, Raithby's ed.

Mere trust not sufficient to create separate property.

It is next to be inquired, what is the effect of creating the trust without naming a trustee. At an early period it was supposed to be essential to the effectual creation of a trust for separate use, that trustees should be interposed; *Harvey v. Harvey*, 1 P. W. 125; *Burton v. Pierpoint*, 2 Id. 79; but it soon became evident that equity could not, without contravening its fundamental principles, permit a trust to fail for want of a trustee; and that the Court of Chancery, the general protector of *cestuis que trust*, might compel any person to whom the legal title devolved, whether the husband or any other individual, to perform the trust. Thus, in the case of *Bennet v. Davis*, 2 P. W. 360, where a testator had devised real estate to his daughter (the wife of A.) for her separate and peculiar use, exclusive of her husband, to hold the same to her and her heirs, and the testator declared that her husband should not be tenant by the curtesy (a), but that it should, upon the wife's death, go to her heirs; the husband became bankrupt; whereupon the wife, by her next friend,

Effect of creating a trust for separate use, without the intervention of trustees.

(a) That curtesy is not excluded by a mere trust for separate use is now settled, (*vide ante*, p. 6); and it is conceived that an express declaration, such as that contained in this will, would be equally inoperative to exclude it; for, where a person creates an estate, he cannot, by any negative expression, deprive that estate of its incidental qualities and properties. Thus, if a person should accompany a devise to a married man in fee, with a declaration that his wife should not be dowable, this would not prevent the dower from attaching, though the testator might, by vesting the legal inheritance in a trustee, effectually have excluded it.

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preferred her bill against the husband and his assignee, to compel them to assign the estate to her separate use. The defendants contended, that the devise being to the wife herself, the husband had a legal right to the profits, and that he could not be a trustee for her, they being one person, and the testator not intending to make him a trustee. But the Master of the Rolls decreed in favour of the wife; for that there being an apparent intention, and express declaration that the wife should enjoy these lands to her separate use, by that means the husband, who would otherwise be entitled to take the profits in his own right during the coverture, was then debarred and made a trustee for the wife. And his Honor observed, that there was no difference where the trust was created by the act of the party, and where by the act of law.

Effect of non-  
intervention of  
trustees.

So, in the recent case of *Parker v. Brooke*, 9 Ves. 583, where a testator bequeathed leaseholds to his daughter for life for her separate use, and after her decease to her children; Sir *W. Grant* treated it as clear, that the husband was a trustee for the wife; and the same point was ruled by Lord *Eldon*, in *Rich v. Cockell*, 9 Ves. 375.

And, it seems to be quite immaterial, whether the husband is expressly constituted a trustee for the wife, or whether the legal property devolves to him, *jure mariti*, under the devise to the wife herself. See 3 Atk. 399; 9 Ves. 369. It is evident, therefore, that little practical danger, though certainly some inconvenience results from the non-intervention of trustees. If the husband should attempt to alien under his legal title, (as happened through a misconception by the parties of their rights, in *Parker v. Brooke*), the alienee, having notice, would, as in other cases, take the property subject to the trust. The circumstances, indeed, might be such as to enable the husband to produce an apparent title without the necessity of disclosing the trust; as, where the wife happens to be the heir-at-law of the testator who devised the property to her for her separate use; for then, the husband, by virtue of such descent, might exhibit a *prima facie* ownership in himself, *jure mariti*, without having recourse to the will at all; and, therefore, it would be the more important to prevent, by vesting the legal inheritance in trustees, the devolution of that inheritance, or of any estate in trust to the husband. On the same account, an objection always exists to leaving in the wife her own legal inheritance in lands about to be settled; a course, however, which is inevitable where she is an infant. (*Vide ante*, p. 30).

As to restrain-  
ing the aliena-  
tion of property.

The next points of inquiry are, whether a power of alienation is incident to the separate ownership of a married woman, and how far such power may be restrained. As these questions have been fully discussed in a former volume, (*vide ante*, Vol. 6, p. 36), a very few additional observations here will suffice.

Where the object of the trust is simply to preserve the income of real or personal property from subjection to the direct power and liability to the engagements of the husband, this may be effected by a trust for the



separate use; but, as such a trust imposes no restraint on the power of alienation, which might immediately after the marriage be exercised for the benefit of the husband, it is obvious that a trust of this nature insures to the wife no efficient protection against marital influence. To accomplish the latter purpose, the wife herself must be incapacitated from affecting her interest; and, so important has it been deemed by the law of England that this object should be attained, that a solitary exception to the strong and well-known policy of that law in favour of alienation has been permitted in the case of a married woman; for, while Courts of law and equity have concurred in demolishing all other fetters on alienation, which ingenuity, stimulated either by prudence or caprice, has for centuries attempted to create, the restriction in question has grown up under the fostering care of a Court of equity. But, even this favoured restriction is limited to the occasion, since it has been decided, that a woman not under coverture cannot be deprived of the power of alienation. *Vide ante*, Vol. 6, p. 36.

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SEPARATE USE.

It remains to be noticed, by what kind of engagement the separate property of a *feme covert* is liable to be bound. Generally speaking, no contract, express or implied, can affect a married woman with any personal responsibility. On this principle it has been held, that where she has charged her separate estate with an annuity, which is vacated for a breach of the statutory regulations, she is not bound to return the consideration money. (*Vide ante*, Vol. 1, p. 358, 1st ed.; Vol. 2, p. 132, 2nd ed.) And the doctrine often laid down, that, in regard to separate property, a *feme covert* is to be considered as a *feme sole*, must not be understood in too extensive a sense; for, it is clear, that if a married woman contracts debts, neither law nor equity affords to the creditors any process by which the property can be made available. *Greatley v. Noble*, 3 Madd. 79. And this applies not only to property which in ordinary cases is out of the grasp of creditors, as stock in the funds, and other *choses en action* (a), but also to that which, if it belonged to a person under no incapacity of being sued, might be reached by an execution, as freehold or leasehold property, goods, &c. But, whatever be the nature of the property, if the creditor holds any document which can by possibility be construed into an appointment or charge of the separate estate, such as even a common bond, bill of exchange, or promissory note, or an engagement to pay in any other form, this will entitle him (the creditor) to resort to a Court of equity

Separate property not bound by general engagement.

Bond or note held to create a charge on separate estate.

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(a) Lord *Hardwicke's* suggestion, in *Horn v. Horn*, Amb. 79, that equity would entertain a suit to have stock vested in trustees applied in satisfaction of a creditor's demand, is now universally exploded. Lord *Thurlow* treated it with ridicule in the case of *Dundas v. Dutens*, as appears from a MS. note of that case, cited by Lord *Manhers* in *Grogan v. Cooke*, 2 Ball & Beat. 233. *Vide ante*, p. 81.

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to have the property applied, or rather the rents and profits of it, (for, beyond this the Court does not go, 4 Russ. 114), in satisfaction of his demand. *Norton v. Turvill*, 2 P. W. 144; *Stanford v. Marshall*, 1 Atk. 68; *Hulme v. Tenant*, 1 B. C. C. 16; *Legard v. Hodges*, 3 B. C. C. 531; *Heatly v. Thomas*, 15 Ves. 596; *Bulpin v. Clark*, 17 Ves. 365; *Greatley v. Noble*, 3 Madd. 79; *Stuart v. Lord Kirkwall*, Id. 387; *Field v. Sowle*, 4 Russ. 112. But the distinction in question between the remedies of the creditors holding documents, and those who have none, appears to exist only during the life of the *feme* debtor; for, after her decease, creditors of the latter class are, it should seem, entitled to share in the application of the separate estate as assets; and specialty creditors have no superiority of claim over simple contract creditors. *Anon.* 18 Ves. 258. For various other points relating to separate property, *vide* 2 Rep. Husb. & Wife, ed. by Jacob, 151; Clancey on the Property of Married Women, *passim*.

COVENANTS TO  
SETTLE LANDS.

## X. CONSTRUCTION AND EFFECT OF THE FOLLOWING COVENANTS.

1. *Covenant to settle particular Lands, or to purchase and settle Lands of a certain Value.*

Covenant to settle particular lands.

Where a person, previously to marriage, covenants to settle particular lands of which he is seised, and dies without having performed his covenant, the lands will be bound in equity, into whosoever hands they may then happen to fall, either by the act of law, or of the party. *Freemount v. Dedere*, 1 P. W. 429. Indeed, no alienee other than a purchaser for value without notice could escape from the obligation to perform the covenant. If, by an alienation of the latter kind, the estate has been irrecoverably placed beyond the reach of the covenantee, he must claim satisfaction out of the general assets of the covenantor; and, provided the instrument were under seal, and the heirs were expressly bound, or the contractor were a trader at the time of his decease, (*vide ante*, Vol. 6, p. 353), his real as well as personal estate would be liable to such claim. It ought, perhaps, to be noticed, that sealing, and the express binding of heirs, are not essential to the instrument, as operating to create a lien on the estate, even in the hands of the heir or devisee, who would be bound to convey in execution of the agreement, (as it is sustained by the valuable consideration of marriage), though it were under hand only, and were of the most informal character. *Gell v. Vermedun*, 2 Freem. 199; *S. C.* 2 Eq. Ca. Ab. 54; *Otway's case*, cit. 2 Freem. 199.

Covenants to settle lands of a certain value.

The next inquiry is, how far the same general doctrine applies to covenants for settling lands of a certain annual or gross value, but without specifying any. Where a person, by marriage articles, enters into a covenant to purchase and settle lands of inheritance of a certain annual or gross value, and dies without having made any such purchase, the

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covenantee will be a specialty creditor in the sum which would have been the *then* actual value of the lands, if a purchase, pursuant to the covenant, had been made; thereby placing the covenantee in the same situation as if the covenant had been performed. *Lady Suffield v. Lord Suffield*, 3 Mer. 699; see also *Pinnell v. Hallett*, Amb. 106 (a). If the covenant were to settle an estate for life only on the wife by way of jointure, the Master, in a suit for the administration of the assets of the deceased covenantor, would be directed to set a value on such life estate. *Freemoult v. Dedire*, 1 P. W. 430. Of course, the rights of the widow and issue, being respectively objects of a covenant of this nature, are for all purposes equal; so that if any loss is incurred, it must be borne by them in proportion to their several estates. *Carpenter v. Carpenter*, 1 Vern. 440.

How far general covenants to settle create a lien on the real estate, present and future, of the covenantor, is a question often agitated. The following positions appear to embody the contents of the decided cases. —*First*, where a man covenants to settle lands, having none at the time, a subsequent purchase of lands corresponding with the terms of his covenant will be deemed to be made with the intention of performing it; and, therefore, on his decease, without any positive evidence of such intention, the lands, whether they may have descended or been devised, will be bound in equity by the covenant. *Tooke v. Hastings*, 2 Vern. 97; *Deacon v. Smith*, 3 Atk. 323.

Purchase where  
a performance.

*Secondly, semble*, if the covenantor, when he entered into the covenant, had lands adequate to its performance, and died without making any farther purchase, the lands of which he was seised at the time will be bound. *Roundell v. Breary*, 2 Vern. 482. But see *Freemoult v. Dedire*, 1 P. W. 429. In *Roundell v. Breary*, A., on the marriage of his son, covenanted in one month to settle lands of the value of 150*l.* *per annum* to use, in strict settlement; the Lord Keeper held, that, although no lands were mentioned in the articles, yet the covenant should be a lien upon the lands whereof A. was then seised, unless he had purchased and settled other lands within the time limited by the articles.

Rule, where the  
covenantor had  
lands at the  
time.

It should be observed, that Mr. Roper, in his *Treatise on Husband & Wife*, Vol. 1, p. 486, without taking notice of this case, lays down a rule directly at variance with it, namely, that a covenant to settle lands of a certain value, without specification of any, gives the wife no lien, and she can only class *pari passu* with the specialty creditors of her husband. But one only of the three cases cited by the learned writer supports the

Conflicting au-  
thorities.

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(a) In *Lord Suffield's* case, (where the covenant was to lay out a gross sum at a prescribed period), land had risen in value since the stipulated time of purchase. But, supposing there had been a depression, might the covenantee elect to have the money which ought to have been laid out?

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position; for, in the other two, (*Girling v. Lee*, 1 Vern. 63, and *Carpenter v. Carpenter*, 1 Vern. 440), the covenant related to *particular* lands; and even in *Freemoult v. Dedire*, 1 P. W. 429, the third and remaining case, it does not appear whether the lands in question belonged to the covenantor at the time of entering into the covenant or not. If they did, the decision is opposed to *Roundell v. Breary*; if they were subsequently acquired, it contradicts *Tooke v. Hastings*, 2 Vern. 97, and *Deacon v. Smith*, 3 Atk. 323. In this state of the authorities, the point cannot be considered as settled.

Covenant to  
purchase and  
settle.

*Thirdly*, where the covenant is to *purchase* and settle, it should seem that the lands of which the covenantor is seised at the time will not in any event be affected; but, all after-purchased lands, or an adequate portion of them, if more than sufficient, will be bound, whether the purchase is made within the period, if any prescribed by the covenant, or not; and in case the lands are not of the full value required by the covenant, they will satisfy it *pro tanto*. *Lechmere v. Lechmere*, Cas. temp. Talb. 80; *S. C.* 3 P. W. 211 (a); see also *Wilcox v. Wilcox*, 2 Vern. 558 (b); *Attorney-General v. Whorwood*, 1 Ves. sen. 441; *Pinnell v. Hallett*, Amb. 106.

Copyholds,  
whether within  
a covenant to  
purchase.

In *Attorney-General v. Whorwood*, 1 Ves. sen. 441, Lord Hardwicke doubted whether copyholds were within a general covenant to purchase, being liable to different tenures, and to forfeiture; but the affirmative is said to have been decided by Lord Harcourt, in the much earlier case of *Wilkes v. Wilkes*, 2 Eq. Ca. Ab. 218, pl. 3, which, however, is reported in a book of very equivocal authority.

Remarks upon  
the general doc-  
trine;

It should be observed, that the doctrine in question is founded on presumed intention, which presumption may be repelled by positive evidence, either documentary or oral; the former, however, being by far the more satisfactory. Thus, if a man, having covenanted to settle lands of 100l. a-year to certain uses, purchased two estates, each of that value, evidence might be adduced to shew that one was, and the other was not intended to be subject to the covenant; and a devise by his will of one, and his leaving the other to descend, would probably be considered as sufficiently indicative of an intention to subject the latter, and that only. In *Pitt v. Jackson*, 2 B. C. C. 51, a person recited by his will, that he

—considered in

(a) According to the report of this case in P. Wms., it seems that the purchase was to be made with the consent of A. and B., which consent did not appear to have been obtained in regard to the purchase in question.

(b) In this case, a bill was filed by the heir, claiming to have the money laid out according to the articles, under the limitations of which he was tenant in tail; but the Lord Chancellor held, that the purchased lands which had descended to him were to be deemed a satisfaction. *Lewis v. Hill*, 1 Ves. sen. 274; see also *Hicks v. Hicks*, 2 Ves. sen. 568.



had received 10,000*l.* out of his wife's fortune, and had purchased a freehold estate in N., but that it was not his intention that the purchase should be considered as an investment of the trust monies in his hands, (which were, it seems by the settlement, to be laid out in land). He then devised his real estate to certain uses. The estate at N. was held not to be bound by the settlement, though the devisor died seised of no others. But, such a testamentary declaration would not avail in general cases, it is conceived, against positive contradictory evidence, shewing that the purchase was made *diverso intuitu*; for, supposing the lien to have once attached, it could not be discharged by any change of intention on the part of the covenantor. And even if there were no such evidence, it is apprehended that a devise would not operate to defeat a lien, which, under the doctrine of any of the propositions before laid down, would actually attach on any of the estates of which the covenantor was seised at his death, unless he (the devisor) left other lands undisposed of, which were adequate to the performance of the covenant. The argument in *Pitt v. Jackson* for the lands not being bound was, that no time being fixed by the articles, within which the purchase was to be made, the devisor had his whole life for its performance; but this reason is very inconclusive as applied to a will, which does not come into operation until the whole of life is spent. If A., having covenanted to settle lands to uses, has no other lands than Whiteacre, and devises these lands to B., if it be an admitted doctrine that these lands would be bound in case they had descended to the heir, it is difficult to find any solid ground for exempting them in the hands of the devisee. And the case of *Tooke v. Hastings*, 2 Vern. 97, is a direct authority for their liability to the covenant in such a case, as there, an estate expressly devised was held to be affected by a covenant to settle lands of a certain value. In *Pitt v. Jackson*, the point was not much discussed, and, probably, the interests of the parties were not materially involved in it.

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relation to lands  
expressly devised.

The strongest authority for the general doctrine under consideration remains to be stated. It is the case of *Sowden v. Sowden*, 1 B. C. C. 583; S. C. 1 Cox, 165, where the husband's covenant was (not to lay out but) to pay the money to trustees to be laid out; and yet, a purchase by him was held to be made in performance of the covenant, on the ground "that, where a man is bound to do an act, and he does what may enable him to do the act (a), it shall be taken to have been done by him with the view of doing that which he was bound to do." From Mr. Cox's report of this case, it seems that the Master of the Rolls grounded his judgment principally on the authority of the case of *Lechmere v. Lechmere*,

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trust monies.

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(a) *Qu.*?—for, the act he was bound to do was different, namely, to pay the money to the trustees.

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*ante*, p. 108, where, though the terms of the covenant were to purchase with the consent of two persons, yet, a purchase made without such consent was held to be a performance; the doctrine of that case, in the opinion of the learned Judge, being, that if a man covenant to purchase land *modo et formá*, if he do purchase at all, whether *modo et formá* or otherwise, it shall be the same thing. This rule, the learned Judge thought, governed the present case.

But, where a sum of money had been vested in trustees by a settlement previous to marriage, upon certain trusts, with a power of investing the same, with the consent of the wife, in the purchase of lands, and the wife, a few days after the marriage, paid this sum to the husband; Sir *W. Grant*, M. R., thought that this did not come within the rule of the cases, so as to subject an estate purchased by the husband to the trusts of the settlement; and, though he admitted that it would be sufficient to prove that the purchase had been made with the trust money, yet, his Honor was of opinion that the evidence did not demonstrate this fact. *Leach v. Leach*, 10 Ves. 511. But, in another case, where there was distinct evidence not only of the purchase having been made with trust money, but of the husband's intention to convey it upon the trusts of the settlement, the estate purchased by him was held to be subject to the trusts (a). *Wilson v. Foreman*, 2 Dick. 593, more fully and accurately stated, 10 Ves. 519.

It remains to be observed, that if money which is directed to be laid out in lands, by articles under seal, to which the husband is a party, gets into his hands, the claim against his assets ranks as a specialty debt. *Benson v. Benson*, 1 P. W. 130.

Sometimes the intended husband covenants to settle all the real estate of which he shall become seised during the coverture, or during his life. A covenant thus exclusively future in its terms, of course does not comprise an estate of which the covenantor was seised when he entered into the covenant; *Prebble v. Boghurst*, 1 Swanst. 321; but clearly, it will extend to all after-acquired property, however derived, not excepting even an estate which eventually devolves to the covenantor, in lands that are expressly settled by the deed containing the covenant. *Needham v. Smith*, 4 Russ. 318. But, if the terms of the covenant are, that the covenantor shall convey an estate which he may acquire in a prescribed manner, this will not embrace an interest in the lands in question, which devolves to him through another channel. And therefore, where a marriage settlement recited that A. might become entitled, by virtue of the limitations of a

Covenants to  
settle future  
real estate.

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(a) Observe the distinction between these cases and those treated of in the next section, in which the trust money was not destined to be laid out in land.

certain indenture, to certain lands, or a share in them, and it was then covenanted that, in such event, the property should be settled to certain uses; and it appeared that, at the time of the execution of the settlement, A. had a remainder expectant on an estate tail, the owner of which afterwards suffered a common recovery, but, on his decease, A. again became entitled to a share in the estate, as one of his co-heiresses at law; this descended share was decided not to be bound by the covenant. *Tayleur v. Dickinson*, 1 Russ. 521. This case suggests a hint in regard to the form best calculated to give efficiency to covenants of this nature.

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If a provision for the intended wife is one of the objects of the covenant, it should be explicitly declared whether it is to extend to real estate acquired after her decease. Where the condition of a marriage bond bound the husband-obligor to settle upon the wife and issue all the real estate of which he should be seised *during his life, the better to make a provision for the wife, in case she should happen to survive him*, the words denoting the making a provision for the wife to be one of the objects of the settlement, were held not to restrain it to real estate acquired during the coverture; wherefore, an estate which descended to the obligor, after the wife's death, was decided to be within the terms of the obligation. *Prebble v. Boghurst*, 1 Swanst. 309.

Question whether covenant was confined to lands purchased during coverture.

## 2. *Covenants to settle present or future Personality.*

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TO SETTLE  
PERSONALTY.

It sometimes happens, that, by a marriage settlement, the husband covenants to settle, upon the trusts of the settlement, all the personality of which he then is possessed; more commonly, the engagement is to settle all the personal estate of which the covenantor shall at any time thereafter become possessed. A covenant of the latter sort, literally construed, would comprise all future property, income as well as capital, and thereby strip the covenantor of his whole means of subsistence; which, clearly, is not the intention. Hence, the rule which has been adopted is, to consider the covenant as applying to capital only, and not to income; but, if savings have been made from real or personal estate, or any other source of income, the accumulations thus amassed, having acquired the character of capital, will become subject to the covenant. The application of a doctrine involving such a distinction obviously leads to inquiries which are attended with some difficulties; but, while Courts of equity have not been deterred by these difficulties from entertaining suits for carrying such covenants into effect, they will not embarrass themselves by attempting a very rigid enforcement of them, as, by entering into a minute scrutiny of the covenantor's expenditure. When the Court finds a mass of property to which the covenant attaches, it will follow such property through its subsequent course of appropriation, extending even to an investment in land. Thus, in the case of *Lowther v. Earl of Westmoreland*, 1 Cox, 64, where A., by a deed-poll executed previously to

Covenants to settle present or future personality;

Latter covenant applies to capital only.

COVENANTS  
TO SETTLE  
PERSONALTY.

Effect of purchasing real estate with money covenanted to be laid out.

marriage, declared that he settled all the lands, goods, and chattels whatsoever, then belonging to him, or which should thereafter belong to him, upon his intended wife, &c. Fifteen years afterwards, he invested 5000*l.*, (whether his property at the time of the settlement does not appear), in the purchase of the manor of R. Mr. Justice *Buller* (sitting for Lord *Thurlow*) held, that the manor so purchased was liable to the articles, and (which was indeed the only disputed point), was to be considered as personal estate.

So, in *Randall v. Willis*, 5 Ves. 262, A., by articles previous to marriage, covenanted within three months after the marriage to settle his estates to certain uses, for the benefit of the wife and issue, and all and singular his personal estate, of what nature or kind soever. Soon after the marriage A. purchased some real estate with personalty of which he was possessed at the time of the articles, taking the conveyance to himself in fee, and by his will devised the property to W. Lord *Loughborough*, on a bill filed by the widow of A., decreed the devisee to convey this estate to her, pursuant to the limitations in the articles.

Present doctrine.

As the covenant in these cases is to settle personalty *as such*, and not to invest it in the purchase of real estate, it seems to be inaccurate to treat the real estate purchased as a subject of property within the terms of the covenant; and in this respect the doctrine of the two preceding cases has been since qualified by subsequent decisions, which have established the rule to be, that the land is not bound *in specie* by the uses, but is charged with the money improperly invested in the purchase.

Money covenanted to be settled, held a charge on lands purchased.

A leading authority on this and some other points connected with the doctrine is the case of *Lewis v. Madocks*, 8 Ves. 150; S. C. 17 Ves. 48, which was as follows:—A., by bond previously to his marriage, engaged to devise, convey, or assure all such goods, chattels, personal estate and effects, that he, at any time during the joint lives of himself and his then intended wife, should be possessed of, to their joint use, and to the use of the survivor of them for ever. A., after the marriage, purchased lands for 1600*l.*, which sum was made up of 600*l.*, his own money, and the residue, *viz.* 1000*l.*, with 21*l.* for the expenses attending the purchase, which he borrowed upon his own personal security. Of the 1021*l.* borrowed, A. discharged 500*l.*, and died leaving 521*l.* unsatisfied. He also, during his life, expended 600*l.* in building a dwelling house, and in lasting improvements upon the estate. A.'s widow and executrix paid about 186*l.* in discharge of his remaining debts, funeral and testamentary expenses; and she, before a second marriage, laid out 353*l.* in repairs and lasting improvements upon the purchased lands, and in redemption of the land tax; into the possession of which lands she had entered upon her husband's death. A.'s personal estate, at his decease, was 573*l.* Lord *Eldon* decided, that the 600*l.*, A.'s own money, and the 500*l.* borrowed, but afterwards paid off by him, were on



the same footing, and were to be considered as his personal estate laid out, and that the remainder of the sum borrowed, and not discharged, was to be considered the debt of the purchased estate; that, as to lasting improvements made by the widow, since the money advanced by her on that account was *bonâ fide* laid out, she was entitled to an inquiry as to it; and with respect to the 186*l.*, his Lordship held, that such sum did not fall within the obligation; observing, "that a great proportion of the debts—about 186*l.*—consisted of such particulars as, in the ordinary course of living, in the last year of a man's life, he would incur, with the exception of some small quit-rents, but which also would be due from him in the course of a proper application of his income, and that they and such particulars could hardly be represented as debts incurred, *so as that the payment of them would be a breach of the husband's obligation under the bond*; that it would be entering into impracticable minuteness to give the wife credit against the real estate for any of the items paid in that schedule;" and his Lordship concluded with the observation, "that if persons would enter into an engagement so difficult in construction and application, they must not expect from a Court of justice relief so minute in that respect." The final decree declared, that the widow was entitled to the 600*l.* and 500*l.*, with interest from her husband's death; and inquiries were directed as to other matters.

TO SETTLE  
PERSONALTY.

This decision of Lord *Eldon* seems to have brought the doctrine concerning covenants to settle personalty into consistency with the principle long since established by the decisions respecting purchases with trust monies not directed to be laid out in lands; in which cases the *cestui que trust* of the money were held to be entitled to a lien only on the lands purchased. *Balgney v. Hamilton*, cit. Amb. 414; *Lane v. Dighton*, Ib. 409.

Rule as to purchases with trust monies.

3. *As to Parent's Covenant to leave a Child about to marry a Share of Property equal to those of the other Children.*

COVENANTS TO  
LEAVE AN  
EQUAL SHARE.

Covenants of the nature described in this title, which are frequently inserted in marriage settlements, are not equally restrictive of dominion with those treated of in the last section. They attach only on that portion of property which the covenantor happens to die possessed of, without interfering with his power of squandering or dissipating it in his lifetime, if he chooses. An unequal distribution of property among the children (*a*) of the covenantor, by his will, to the disadvantage of the covenantee, is the act against which the covenant is immediately directed. The principal point arising on such covenants has been, whether they admit of gifts to a child taking effect in the parent's lifetime. In

Covenants to leave one child an equal share with the rest.

Gift reserving a

(*a*) To render these covenants effectual, they should be extended to gifts to issue of every degree.

COVENANTS TO  
LEAVE AN  
EQUAL SHARE.

life interest  
within the co-  
venant.

the case of *Jones v. Martin*, 3 Anst. 882; *S. C.*, more fully, 5 Ves. 266, n., Lord *Loughborough* thought that a gift out and out might be allowed; but he decided, (or rather, induced the House of Lords to decide), that a transfer of stock to a child, with an agreement, though oral, that the father should take the dividends during his life, was void, as being designed to elude the covenant. And even where the covenant was in terms confined to such real and personal estate as the covenantor should die seised and possessed of, it was held by Sir *W. Grant*, M. R., (following Lord *Rosslyn's* distinction, in *Jones v. Martin*), that the covenantor could not defeat it by a gift posthumous *in enjoyment*, though not testamentary, as by a transfer of stock to trustees, with a declaration of trust for the covenantor for life, and, on his decease, for one of his children. *Fortescue v. Hennah*, 19 Ves. 67.

In the case of *Willis v. Black*, 1 Sim. & Stu. 525; *S. C.* 4 Russ. 170, certain advancements were held to fall within the meaning of the covenant, though made to take effect immediately, without any reservation of interest to the covenantor himself; but the question seems to have turned less on the general doctrine than on the particular language of the covenant, which purported that A. (the covenantor) would devise, bequeath, or otherwise secure to or in favour of B., and C. his intended wife, (A.'s daughter), and the issue of the marriage, upon the trusts thereinbefore mentioned, as great a share of his property as he should, by will or otherwise, provide for his other younger children, *to take effect on the decease of the survivor of himself and his present wife*; and in case he should die intestate, or neglect to make such a provision, then the heirs, executors, or administrators of A. should pay to the trustees of the settlement as great a share of his property as his younger child or children should *in that event* become entitled to; Lord *Lyndhurst*, C., reversing a decree of Sir *J. Leach*, V. C., held, that the words "to take effect at the death of himself and his present wife," applied only to the provision covenanted to be made, and not (as it had been decided in the Court below) to the provision of the other younger children, to which it was to be made equal; and that the subsequent words, "in that event," referred to the event of the covenantor dying intestate, or without making a will, in conformity to the stipulation; the consequence of which construction was, that the advancement made by A., in his lifetime, to his other younger children, was a breach of the covenant.

Question, whether an advancement was within the prohibitory terms of a covenant.

Covenant confined to children living at the death.

A covenant of this nature embraces children living at the decease of the covenantor, (*i. e.* when the will takes effect), exclusively of those dying in the covenantor's lifetime. This was one of the points decided in the case of *Needham v. Smith*, 4 Russ. 318, which was as follows:—A., on his second marriage, after settling a freehold estate on himself for life, with remainder to the intent that his intended wife might receive an annuity for life, with remainder to all his children by both marriages in

fee, covenanted that he would, by will or otherwise (*a*), give all other his real estates, and also all his personal estate, unto and amongst his children by his late wife, and also by his intended wife, and their heirs, executors, and administrators, share and share alike, except such part as he might thereafter give to the use of the intended wife herself. After the execution of this settlement, A., having children of both marriages living, contracted to sell certain freehold property, to part of which he was entitled at the date of the settlement, and other part of which he had subsequently acquired. The purchaser objecting to the title on account of the covenant, A. filed a bill to enforce the performance of the contract. On the hearing of the cause, the Vice-Chancellor sent a case to the Court of King's Bench, with the question, whether the sale and conveyance to the purchaser would be a breach of the covenant. The Judges of that Court certified in the negative. (See *Needham v. Kirkman*, 3 Barn. & Ald. 531). Two of the children died in the lifetime of A., who, under the will of the surviving child, became entitled to their shares. By his own will he devised the shares in question in a manner different from that which the covenant prescribed. It was held, first, that the remainder in fee acquired by the father in the shares of his deceased children, was bound by the covenant, in like manner with all the other property of which he was seised at his death; and, secondly, that the representatives of the children who died in the lifetime of their father, one of whom left a child, could have no benefit from the covenant.

COVENANTS TO  
LEAVE AN  
EQUAL SHARE.

In the case of *Cochran v. Graham*, 19 Ves. 66, Lord Eldon appears to have considered that a husband's covenant to leave his intended wife such a portion of his personal estate as she would be entitled to under the statute of distributions, if she died intestate, though it did not prevent the covenantor from spending all his property, restrained him from reserving to himself any part of it for his own benefit, and that he could not lay it out in land. It is observable, that in *Needham v. Smith*, and the other cases in which a covenant of this nature was held not to interfere with a conversion of the property from realty into personalty, or *vice versâ*, the covenant extended both to real and personal estate, so that it equally affected the property in either state; and, it should seem from Lord Eldon's observations, just noticed, that if the conversion would have the effect of withdrawing property from the operation of the covenant, it would be a breach.

Investment in  
land, whether  
restrained in  
certain cases.

SETTLEMENTS  
IN PURSUANCE  
OF WILLS.

#### XI. SETTLEMENTS IN PURSUANCE OF EXECUTORY TRUSTS IN WILLS.

Often, in preparing settlements pursuant to executory trusts, and,

As to executory  
trusts in wills.

(*a*) It is worthy of observation, that the covenant, in this case, was not confined to a testamentary disposition.

SETTLEMENTS  
IN PURSUANCE  
OF WILLS.

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still more frequently, in investigating titles, the practising conveyancer finds the utility of an acquaintance with the rules of construction applicable to these trusts. The general principles governing them are the same as those which regulate the construction of marriage articles, already discussed, (*ante*, p. 50), with this difference, that, in regard to the latter, the occasion affords an inference of intention which does not belong to testamentary trusts. "In marriage articles," to quote the words of a venerable living Judge, "the object of such settlement, the issue to be provided for, the intention to provide for such issue, and, in short, all the considerations that belong peculiarly to them, afford *prima facie* evidence of intent, which does not belong to executory trusts under wills. But, according to all the decisions, *allowing for that*, an executory trust in a will is to be executed in the same way." See Lord Eldon's judgment in *Jervoise v. Duke of Northumberland*, 1 Jac. & Walk. 574. The diversity of construction between marriage articles and wills, which has arisen out of the principle in question, is sufficient to justify the complete dissociation of the two classes of cases in the present dissertation. It should be further premised, that the rules of construction about to be treated of apply equally to deeds and wills—in fact, to every species of instrument not founded on marriage; though executory trusts are so seldom found in any other instrument than a will, that the rules fixing their construction, (as contradistinguished from similar trusts in marriage articles), are commonly viewed as testamentary.

Instances of a  
strict settlement  
being decreed.

I now proceed to consider in what cases of this kind Courts of equity, in carrying into effect a direction to settle, decree limitations in strict settlement, and when they decree to the original object of such trust an estate tail. The result of the authorities can be ascertained only by a careful comparison of these two species of cases; which may be facilitated by the following summary of both, commencing with those in which a strict settlement has been directed.

Direction to settle on A. and the heirs of his body, but A. not to have power to bar the entail;

One of the earliest authorities of this class is the case of *Leonard v. Earl of Sussex*, 2 Vern. 526; where a testatrix devised her estates to trustees, with a direction to settle the same on her son A. and the heirs of his body by a second wife, with remainders over to another son, &c., "taking special care in the settlement, that it should never be in the power of her sons to dock the entail during their lives." The Court held, that, in executing the trust, A. should be made tenant for life, and not tenant in tail, but directed that his estate should be without impeachment of waste. One of the grounds of this determination, (and that to which the case has generally been referred), is, that the testatrix had declared her intention that the sons should not have it in their power to bar their children.

—to A. for life, remainder to trustees to preserve, remainder

So, in the case of *Papillon v. Voice*, 2 P.W. 471, where A. bequeathed 1000*l.*, to be laid out in the purchase of lands, to be settled on B. for life, without impeachment of waste, with remainder to trustees to preserve



contingent remainders, remainder to the heirs of the body of B., with remainders over, with a power to B. to make a jointure; and by the same will certain lands were devised to D. for life, with similar remainders. Lord *King* held, that though, as to the lands devised, the will gave an estate tail, yet, that the lands to be purchased should be limited to B. for life, with power, &c., with remainder to trustees to preserve, remainder to the first and every other son in tail.

SETTLEMENTS  
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to the heirs of  
the body of A.;

Next is the case of *Ashton v. Ashton*, 1 Collect. Jur. 402, where money being directed by will to be laid out in the purchase of lands of inheritance, to be conveyed to A. for life, and, after his death, to the issue of his body lawfully begotten, with remainders over, the question arose, what estate A. ought to have in the lands to be purchased—whether for life only, or in tail? and the Court held that he ought to be made tenant for life only, with remainder to trustees to preserve contingent remainders, with remainders to his first and other sons in tail general, with remainder to his daughters in tail, as tenants in common, with cross remainders between them.

—to A. for life,  
and, after his  
decease, to his  
issue;

Again, in the case of *White v. Carter*, 2 Eden, 366; *S. C.* Amb. 670, where money was bequeathed to be laid out in lands, to be settled as counsel should advise, upon trustees and their heirs, upon trust, and to and for the use of A. and his issue in tail male, to take in succession and priority of birth, with remainders to B. and the heirs male of her body, to take in succession and priority of birth; and the testator directed that the interest of the money, until a purchase could be found, should be paid “to A. and B. and their respective sons and issue male, who would have been entitled to the rents of the estate, if purchased.” The question arose, whether the estate to be purchased was to be settled on A. in tail, or merely for life, with remainder to his first and other sons in tail; Lord *Northington* directed the settlement to be made on A. for life, with remainder to his first and other sons in tail, on the ground that something was left by the creator of the trust to be done. And upon a re-hearing Lord *Camden* affirmed the decree, observing—“The intention is very plain. The testator directs the settlement to be made by the advice of counsel, and in succession and priority. He meant something different from an estate tail, when he wanted the assistance of counsel; and though the words ‘in succession and priority’ may have an effect in case the plaintiff takes an estate tail, yet, they were meant to give an interest to the sons, after the death of the plaintiff. The latter clause puts it out of doubt: he there explains his meaning, by making use of the words ‘sons and issue.’”

—to A. and his  
issue in tail, to  
take in succe-  
sion, &c.;

So, in the case of *Dodson v. Hay*, 3 B. C. C. 404, where a testator bequeathed unto his sister a sum of money to be laid out in the purchase of land in any part of Great Britain she might choose for a place of retirement, the said purchase, when made, to be for ever entailed on her issue; and at her decease, the annual produce of such purchase to be equally

—to be for ever  
entailed on the  
issue, &c.

SETTLEMENTS  
IN PURSUANCE  
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divided among her issue, males and females, for their maintenance. - Lord *Alvanley*, then M. R., held, after a review of the authorities, that the proper mode of executing the trust would be to give the sister an estate for life, and her children estates tail as purchasers.

Distinction,  
where the au-  
thor of the trust  
declares his own  
uses.

But a distinction is to be observed between the preceding cases, and those in which the testator has taken on himself to declare the intended limitations of the property to be conveyed, or, as the phrase is, to be his own conveyancer. There the Court, in executing the trust, follows its precise terms, or, to speak more accurately, limits such estates as the directory words themselves would create, if applied to an immediate and executed devise. Thus, in the case of *Austen v. Taylor*, 1 Eden, 361; *S. C.* Ambl. 376, lands were devised to trustees in trust for A. for life, with remainder to trustees to preserve contingent remainders, with remainder to the heirs of the body of A. And the testator gave his personal estate to the trustees in trust to buy lands, which he directed should "remain, continue, and be for and upon such and the like estate or estates, uses, &c., as were before declared concerning his lands thereinbefore devised, or as near thereto as might be, and the death of persons would admit." The question arose, whether A. was entitled to the lands to be purchased for life or in tail; Lord *Northington* held, that he was to be tenant in tail, upon the ground that the testator had referred no settlement to his trustees to complete, but had declared his own uses and trusts. His Lordship said:—"The true criterion is this: wherever the assistance of the trustees, which is ultimately the assistance of this Court, is necessary to complete a limitation, in that case the limitation in the will not being complete, that is sufficient evidence of the testator's intention, that the Court should model the limitations. But, where the trusts and limitations are already expressly declared, the Court has no authority to interfere, and make them different from what they would be at law."

Cases in which  
an estate tail has  
been directed,  
as being most  
consistent with  
the intention.  
*Seale v. Seale*.

And even where the author of the trust has assumed to be his own conveyancer, as in the last case, but has directed a conveyance to be made to certain uses; yet, if the limitations to be created are described by words which would give an estate tail to the first taker, and nothing appears to mark the testator's intention to use such words in any other than their technical sense, the trust must be executed according to the strict literal construction. Thus, in the case of *Seale v. Seale*, Gilb. Eq. Cas. 105; *S. C.* 1 P. W. 290, a testator, after expressing his desire to secure his estate in his name, devised all the residue of his real and personal estate to A., and the heirs male of his body to be begotten, for ever, with remainder to B., and the heirs male of his body, with remainder to others of his name; and appointed B. executor. The will contained directions, that a part of his personal estate (a) should be laid out

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(a) The direction was, to lay out lands of the value of 300*l.* or 400*l.*

in lands, to be settled *in manner before mentioned*. A., by the present bill claimed the personal estate absolutely. B. insisted, that it ought to be laid out in lands, to be settled on A. for life, with remainder to his first and other sons in tail male; and so in like manner with respect to the other remainders. The Lord Chancellor seemed to agree, that, in the case of marriage articles, such would have been the construction; but, as in the case before him, the testator had expressly given it to the plaintiff, his Lordship thought that the Court could not vary the limitation. The settlement was decreed to be made accordingly.

So, in the case of *Sweetapple v. Bindon*, 2 Vern. 536, 300l. was bequeathed to be laid out in lands, and settled to the use of the testator's daughter and her children; and if she died without issue, the lands to be divided between her brothers and sisters then living. After the daughter's death, her husband brought a bill, either to have the money laid out in lands, and the lands settled upon him for life, as tenant by the curtesy; or to have the interest of the money paid to him in lieu of the profits of the lands. The latter was decreed, on the ground, that, if it had been an immediate devise, the daughter would have been tenant in tail, and consequently the husband would have been tenant by the curtesy; and in the case of a voluntary devise, the Court must take it as they found it, and not lessen the estate or benefit of the legatee; although, upon the like words in marriage articles, it might have been otherwise.

*Sweetapple v.  
Bindon.*

This was a strong case, because the terms used were not technically appropriate, though probably sufficient to create an estate tail.

So, in the case of *Blackburn v. Stables*, 2 Ves. & Bea. 367, where a testator, after having devised the residue of his real and personal estate to his executors, for the sole use and benefit of a son of A., at the age of twenty-four; and, if he had no son, over to others, with a direction to take the testator's name, declared that, on whomsoever his disposition should take place, his will was, that he (the devisee) should not be put in possession of any of his (the testator's) effects, until the age of twenty-four; nor should his executors give up their trust, "*until a proper entail be made to the male heir by him.*" A. had a son *en ventre sa mere*, at the testator's death, and it was held, that such son should be made tenant in tail. Sir W. Grant, M. R., alluding to the often cited distinction between marriage articles and a will, observed, in regard to the latter — "A testator gives arbitrarily what estate he thinks fit. There is no presumption that he means one quantity of interest rather than another, an estate for life rather than in tail, or in fee. The subject being mere bounty, the intended extent of that bounty can be known only from the words

*Blackburn v.  
Stables.*

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*per annum*, and lands of the latter being the larger value were directed to be purchased.

SETTLEMENTS  
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in which it is given; but, if it is clearly to be ascertained from any thing in the will, that the testator did not mean to use the expressions which he has employed in their strict proper technical sense, the Court in decreeing such settlement as he has directed, will depart from his words in order to execute his intention." His Honor then proceeded to shew, that, by the established rules of construction, the words of the devise in the present instance would create an estate tail; and that there was an absence of every circumstance commonly relied on as indicating the testator's intention to use the words in any other than their technical sense. The word was "heir," not "issue;" there was no express estate for life given to the ancestor; no clause, that the estate should be without impeachment of waste; no limitation to trustees to preserve contingent remainders; no direction so to frame the limitations, that the first taker should not have the power of barring the entail. The words were therefore to be taken in their literal acceptance.

*Marshall v.  
Bousfield.*

The last case of this class is *Marshall v. Bousfield*, 2 Madd. 166, where a testator devised his real and personal estate to S. for life, and after her decease directed that the same should be settled by able counsel, and go to and amongst his grandchildren of the male kind, and their issue, in tail male; and for want of such issue upon his female grandchildren which should be living at his decease; and the testator declared that the shares of his grandchildren and their respective issue, should be in such proportions as his wife S. by deed or will should appoint. Sir T. Plumer, V. C., held, that a grandchild who came *in esse* during the life of S. was entitled to an estate tail. It is observable, that in this case, as the grandchild was not *in esse* at the death of the testator, it was impossible to give him an estate for life, with remainders to his first and other sons; and the Vice-Chancellor applied the same remark to *Blackburn v. Stables*, but incorrectly, as there the object of the trust was *en ventre sa mere* at the testator's decease.

Remarks upon  
the cases.

A glance at the two preceding classes of cases will shew that the boundary line between them is in some instances very faintly marked, and resort must be had to the finest distinctions, in order to reconcile all the authorities. The case of *Austen v. Taylor* is to be distinguished from *Papillon v. Voice*, and *Ashton v. Ashton*, only in the circumstance that the land to be purchased is directed to "remain," instead of to be "settled" to the prescribed uses, with the addition indeed, that, in *Papillon v. Voice*, there was a power to jointure; and, in *Ashton v. Ashton*, the word was "issue" instead of "heirs;" (as to which, *vide* 2 Ves. & Bea. 371); but a power to jointure cannot more strongly demonstrate an intention to create an estate for life only, than an express limitation for life, either with or without a limitation to trustees to preserve contingent remainders. And, though these circumstances have no effect in preventing the application of the rule in *Shelley's* case, that being a stub-



born unyielding rule of tenure; yet, as *indicia* of intention, they might seem to afford an important guide in the construction of an executory trust. According to the case of *Austen v. Taylor*, however, such circumstances are not to be regarded, where the testator, instead of directing the trustees to purchase and settle the lands to such limitations, declares that the lands when purchased shall remain to those uses. But, no case has gone farther in applying technical rules to the construction of an executory trust, than *Blackburn v. Stables*. The trust, it will be observed, related not to lands to be purchased, as in *Austen v. Taylor*, but to lands of which the testator was then seised, and which therefore he might directly have devised to the object of the trust, if such had been his simple intention; instead of which, he imposes the task of creating the intended limitations on another, describing the nature of them, not in terms technically applicable to an estate tail, and that only, but having all that looseness and ambiguity which the Court, in executing directions to settle, has always laid hold of as warranting the insertion of limitations in strict settlement. A somewhat similar trust occurred in the case of *Jervoise v. Duke of Northumberland*, 1 Jac. & Walk. 559, the terms of the will being as follow:—"To my son A., I leave all my estates at B., to be entailed upon his male heirs, and, failing such, to pass to his next brother, and so on from brother to brother, allowing 2500*l.* to be raised upon the estates for female children each; the above-named estates are to be liable to all my debts at my decease, and to the fortunes left to my younger children, unless otherwise discharged." A. suffered a common recovery, the persons claiming under which sold the estate to the defendant, whose counsel objected to the title, on the ground that the devise created an executory trust which ought to have been executed by limitations in strict settlement; and Lord *Eldon* was of opinion, that the contrary was not so clear as to induce the Court to compel the acceptance of the title. His Lordship did not rely upon the power to charge as negating the construction of an estate tail, because such powers are often conveniently given to tenants in tail.

Estates to be entailed on male heirs.

It is to be lamented, that the question before the Court was not such as to wrest from his Lordship a positive determination of the point of construction, which might have extricated the subject from some of the uncertainty which now surrounds it. The general tenor of Lord *Eldon's* observations, (which are too diffuse to be here presented to the reader), as well as the nature of the decision itself, must necessarily weaken confidence in the case of *Blackburn v. Stables*, to which it is remarkable his Lordship does not allude.

Remark upon *Jervoise v. Duke of Northumberland*.

It remains only to be observed, that, in making a strict settlement, the Court, without express authority, inserts limitations to preserve the contingent remainders, where they are wanted, though the author of the trust may have assumed to detail at large the limitations to be created. *Baskerville v. Baskerville*, 2 Atk. 279.

MONEY  
SETTLEMENT  
ON MARRIAGE.

SETTLEMENT of STOCK for the exclusive  
Benefit of an INTENDED WIFE (a).

Parties.

Recital of intended marriage, and agreement to settle.

—Transfer of stock.

Testatum.

Declaration that trustees shall stand possessed.

**THIS INDENTURE**, made the — day of —, BETWEEN [*intended husband*], of &c., of the first part; [*intended wife*], of &c., of the second part; and [*trustees*], of &c., of the third part. WHEREAS a marriage is intended shortly to be solemnized between the said [*intended husband*] and [*intended wife*]. AND WHEREAS, upon the treaty for the said intended marriage, it was agreed between the said [*intended husband*] and [*intended wife*], that the sum of 500*l.* Three Pounds *per centum* Consolidated Annuities, belonging to the said [*intended wife*], should be settled upon the trusts hereinafter expressed concerning the same. AND WHEREAS, in pursuance of the said recited agreement, the said [*intended wife*] has this day transferred into the names of the said [*trustees*] the said 500*l.* Three Pounds *per centum* Consolidated Annuities, in the books at the Bank of England, as they the said [*trustees*] do hereby declare and acknowledge. NOW **THIS INDENTURE WITNESSETH**, that, in further pursuance of the said recited agreement, and in consideration of the said intended marriage, *It is hereby declared and agreed* by and between the said parties to these presents, that the said [*trustees*], and the survivor of them, his execu-

Remarks on the precedent in the text.

(a) This precedent exhibits the simplest mode of securing to a lady, about to marry, the absolute dominion over her personal property, which the law would otherwise have given to her husband. If she survives her husband, the property is made simply to revert to her. If she dies in his lifetime a general power of disposition over it is reserved to her, by the exercise of which the surviving husband, as well as any other person, may become entitled; but he can take nothing without a positive donative act in his favour, as the trusts exclude him in every event; for it has long been settled that a surviving husband is not an object of a trust for the next of kin of his wife. *Watt v. Watt*, 3 Ves. 244; *Anderson v. Dawson*, 15 Ves. 537; *Bailey v. Wright*, 18 Ves. 49.

tors or administrators, shall stand possessed of the said 500*l*. Three Pounds *per centum* Consolidated Annuities, IN TRUST for the said [*intended wife*], her executors, administrators, and assigns, until the solemnization of the said intended marriage, and, after the solemnization thereof, upon the trusts following, (that is to say), UPON TRUST, during the joint lives of the said [*intended husband*] and [*intended wife*], to pay the dividends and annual produce arising therefrom to the said [*intended wife*], for her separate use, exclusively of the said intended husband, (b) [and so that the receipt in writing of the said [*intended wife*], or of such person or persons as she shall appoint from time to time to receive the same interest or dividends, shall be a sufficient discharge to the trustees or trustee who shall pay such dividends or annual income, by virtue hereof;] And, from and after the decease of either of them the said [*intended husband*] and [*intended wife*], in case the said [*intended wife*] shall survive the said [*intended husband*], then as to the said Three Pounds *per centum* Consolidated Annuities, and the dividends and annual produce thenceforth to arise therefrom, IN TRUST for the said [*intended wife*], her executors or administrators, for her or their own absolute use and benefit; but, in case the said [*intended wife*] shall die in the lifetime of the said [*intended husband*], then IN TRUST for such person or persons, for such interest or interests, and in such manner and form in all respects, as the said [*intended wife*] shall, by any deed or deeds to be sealed and delivered by her, in the presence of and attested by one witness or more, or by her last will and testament, to be signed in the presence of and attested by two witnesses or more, notwithstanding her said intended coverture, shall direct or appoint; And in default of such direction or appointment, and subject to any such which shall not be a complete disposition of the said trust premises, IN TRUST for the person or persons who would be entitled to the personal estate of the said [*intended wife*], in

MONEY  
SETTLEMENT  
ON MARRIAGE.

In trust to pay dividends to wife during the joint lives of herself and her husband.

Ultimate trust, on determination of coverture.

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(b) If it is intended to restrain alienation, (as to which *vide ante*, p. 104), add, instead of the words in brackets, the following—

“and so that the said [*intended wife*] shall have no power to alien or anticipate the same, or any part thereof.”

MONEY  
SETTLEMENT  
ON MARRIAGE.

Power to trustees to vary securities.

case she died intestate and without leaving a husband; and in the like shares and proportions as such person or persons would be entitled thereto; And upon, to, or for no other trust, intent, or purpose whatsoever. *Provided always*, and it is hereby declared, that it shall be lawful for the said [trustees] or the survivor of them, his executors or administrators, at any time or from time to time, with the consent in writing of the said [intended wife], to sell and dispose of the said 500*l.* Three Pounds *per centum* Consolidated Annuities, and to invest the money to arise from such sale in any other of the stocks or funds, or other Government securities in the United Kingdom, or on mortgage of freehold, copyhold, or leasehold property situate in England or Wales, and vary and transpose the same as often as occasion shall require or as shall be thought fit; And the said stocks, funds, or securities, upon which the produce of the said Three Pounds *per centum* Consolidated Annuities shall from time to time be invested by virtue of this provision, shall be subject to all the trusts hereinbefore expressed concerning the same; And upon every such variation or transfer of the said trust funds and securities as aforesaid, or otherwise, any person or persons who shall pay any monies to the said [trustees] or the survivor of them, his executors or administrators, shall be exempt from all responsibility in respect of the application thereof. *Provided also*, and it is hereby further declared, that, in case the said [trustees] or either of them, or any trustee or trustees to be appointed under this present provision, shall die or become unwilling or unable to act in the aforesaid trusts (c), it shall be lawful for the said [intended wife] (d), by any writing under her hand and seal, to nominate any fit person or persons to supply the place or places of such trustee or trustees (e); And that, immediately after

Power to appoint new trustees.

Variations.

(c) Add, if so intended, especially if only one trustee is appointed—  
“or in case the said [intended wife] shall think proper to increase the number of trustees.”

(d) As the trusts terminate with the coverture, it is sufficient to vest this power personally in the *cestui que trust*.

(e) Or, “to become such additional trustee or trustees as aforesaid.”



every such nomination, the said trust stocks, funds, and securities shall be transferred, at the costs of the said trust estate, in such manner that the same may vest in such new trustee or trustees, jointly with the surviving or continuing trustee or trustees, or in such new trustee or trustees solely, as the case may require, subject to the trusts aforesaid; and such new trustee or trustees shall have and may exercise all the powers and authorities whatsoever hereinbefore contained, as effectually and in the same manner, to all intents and purposes as if he, she, or they had been expressly named therein: *And further*, that the trustees for the time being shall be charged with such sums only as they respectively shall actually receive by virtue of the trusts herein contained, notwithstanding their joining in or signing any receipt or receipts, or doing any other act for the sake of conformity; and that they or any of them shall not be answerable for any loss which may happen in the execution of the aforesaid trusts, or in relation thereto, except the same shall happen by or through his, her, or their wilful neglect or default; *And lastly*, that it shall be lawful for the said trustees or trustee for the time being, out of the monies which shall come to their or his hands by virtue of the trusts aforesaid, to retain and also to allow to each other all costs and expenses, and fees to counsel for advice, which they or any of them may pay or incur in or about the execution of the aforesaid trusts, or in relation thereto. IN WITNESS, &c.

MONEY  
SETTLEMENT  
ON MARRIAGE.

Indemnity to  
trustees.

MONEY  
SETTLEMENT  
ON MARRIAGE.

SETTLEMENT of Stock on the Intended HUSBAND and WIFE and their ISSUE, containing the common Provisions for MAINTENANCE and ADVANCEMENT, VARYING FUNDS, APPOINTING NEW TRUSTEES, &c. (a).

Parties.

Recital of intended marriage, and agreement to settle;

—Transfer of stock;

Testatum.  
Declaration of trusts;

**THIS INDENTURE**, made the — day of —, BETWEEN [*intended husband*], of &c., of the first part; [*intended wife*], of &c., of the second part; and [*trustees*], of &c., of the third part: WHEREAS a marriage is intended to be shortly solemnized between the said [*intended husband*], and the said [*intended wife*]; and upon the treaty of the said intended marriage, it was agreed that the said [*intended husband*] should place 8000*l.* Three Pounds *per centum* Reduced Annuities, in the names of the said [*trustees*], for the purpose of being settled upon the trusts and in the manner hereinafter mentioned: AND WHEREAS the said [*intended husband*] hath accordingly transferred to the said [*trustees*], 8000*l.* Three Pounds *per centum* Reduced Annuities, which now stand in their names in the books kept for that purpose at the Bank of England. NOW THIS INDENTURE WITNESSETH, and it is hereby agreed and declared [between and by the parties to these presents (b)], that the said [*trustees*], their executors, administrators, and assigns, shall stand possessed of and interested in the said 8000*l.* Three Pounds *per centum* Reduced Annuities, from and after the solemnization of the marriage.

Remark on the precedent in the text.

(a) This precedent contains the provisions commonly inserted in marriage settlements, and is therefore well calculated for general adoption. In one particular, certainly, the next is more complete, namely, in giving to the husband and wife, and the survivor, a power of appointment among the children of the marriage, and their issue, which is often found very convenient.

(b) The words in brackets may be omitted throughout without affecting the operation of the instrument.

MONEY  
SETTLEMENT  
ON MARRIAGE.

zation of the said intended marriage (c), upon and for the trusts, intents, and purposes, [and with, under, and subject to the powers, provisoes, and agreements] hereinafter expressed concerning the same, that is to say, *Upon trust*, that they the said [*trustees*], and the survivor of them, his executors, or administrators, do and shall during the joint lives of the said [*intended husband*] and [*intended wife*], by and out of the interest, dividends, and annual produce thereof, pay unto the said [*intended wife*] the annual sum of 100*l.* of lawful money of Great Britain and Ireland, for her sole and separate use and benefit, exclusively of the said [*intended husband*], her intended husband, [who is not to intermeddle therewith, nor is the same to be subject to (d) his disposition, control, debts, or engagements, and the receipt or receipts in writing of the said [*intended wife*], and of such person and persons as she shall from time to time direct or appoint to receive all or any part of the said annual sum of 100*l.* (e), shall from time to time be good and effectual releases or discharges for the payment of the said annual sum of 100*l.*, or so much thereof as in such receipt or receipts shall be acknowledged to be received]; the same to be paid and payable to the said [*intended wife*] half yearly, on the same days as the dividends of the said 8000*l.* Three Pounds *per centum* Reduced Annuities shall be paid and payable, free and clear of and from all parliamentary and other taxes, and all deductions and abatements whatsoever, the first payment thereof to be made on the day on which the

Upon trust to pay 100*l.* per annum for the separate use of the wife, during coverture;

—and her receipts to be sufficient discharges.

The pin money to be paid half-yearly.

(c) The omission in this precedent of an express trust in favour of the settlor until the marriage, is not material, since equity would imply a trust to this effect; but, in general, it is better to leave as little as possible to implication, and therefore, an express trust ought to be inserted as in former and succeeding precedents, especially if it does not distinctly appear on the face of the settlement from whom the settled property comes.

As to the resulting trust until the marriage.

(d) If the wife's interest is to be inalienable, add, instead of the remainder of the clause within brackets:—

“be aliened, anticipated, or disposed of by the said [*intended wife*] in any manner howsoever.”

(e) “after the same shall have become due.”

MONEY  
SETTLEMENT  
ON MARRIAGE.

Residue of the dividends to the husband for life, and, after the wife's decease, the whole dividends.

After the husband's decease to the wife for life.

After the decease of the survivor, to the child or children of the marriage attaining twenty-one, &c.

dividends of the said 8000*l.* Three Pounds *per cent.* Reduced Annuities shall first become payable after the execution of these presents; And as to the residue of the interest, dividends, and annual produce of the said 8000*l.* Three Pounds *per centum* Reduced Annuities, during the life of the said [*intended wife*], And also, as to the entire interest, dividends, and annual produce arising therefrom after the decease of the said [*intended wife*], in case she shall die in the lifetime of the said [*intended husband*], *Upon trust*, to permit and empower the said [*intended husband*] and his assigns, to receive and take the same during his natural life for his and their own use and benefit; And after the decease of the said [*intended husband*], in case the said [*intended wife*] shall survive him, *Upon trust*, to permit [and suffer and authorize], and empower the said [*intended wife*] and her assigns to receive and take all and every the interest, dividends, and annual produce of the said 8000*l.* Three Pounds *per centum* Reduced Annuities, during her natural life, for her and their own use and benefit; And after the decease of the survivor of them the said [*intended husband*] and [*intended wife*], Then, as to and concerning the said 8000*l.* Three Pounds *per centum* Reduced Annuities, and the interest, dividends, and annual produce thenceforth to arise therefrom, *In trust* for such child, if only one, or both or all such children, if more than one, of the said [*intended husband*] by the said [*intended wife*], as, being a son or sons, shall attain the age of twenty-one years; or, being a daughter or daughters, shall attain the age of twenty-one years, or be married under that age (*f*),

Remark as to the vesting of shares.

(*f*) As this trust postpones the vesting until the majority of sons, and the majority or marriage of daughters, it prevents the necessity of any cross executory trust embracing the expectant shares of those who die before the vesting age, or event; for these shares, on the failure of their presumptive objects, pass equally with the others under the original trust. It is, indeed, by no means uncommon in settlements and wills, to find a declaration expressly postponing the vesting until a certain age, coupled with a survivorship clause providing for the event of death under such circumstances; involving, therefore, the palpable contradiction of making the instrument dispose of the shares of those whom it has just before declared to have no shares.



MONEY  
SETTLEMENT  
ON MARRIAGE.

which shall first happen; the same trust fund to be, if only one such child, paid, assigned, or transferred unto him or her wholly, or if two or more such entitled children, then to be paid, assigned, or transferred unto them in equal shares, as tenants in common; and the share of each such son to be paid, assigned, or transferred at his age of twenty-one years, and of each such daughter at her age of twenty-one years, or day of marriage, which shall first happen, or so soon thereafter as the decease of the survivor of them the said [*intended husband*] and [*intended wife*] will permit. PROVIDED ALWAYS, and it is hereby declared, that, if it shall happen that at the decease of the survivor of them, the said [*intended husband*] and [*intended wife*], any child or children of the said intended marriage, being a son or sons, shall be under the age of twenty-one years, or, being a daughter or daughters, shall be under that age without having been married, then and in such case it shall be lawful for the trustees or trustee for the time being of these presents, during the minority of any such son or sons respectively, or the minority and coverture of any such daughter or daughters respectively, to pay and apply the dividends or interest arising from the respective portion to which such child, or each such child respectively, shall or may originally or by survivorship be presumptively entitled under the trusts hereinbefore declared, or such part thereof as the said trustees or trustee shall think proper, for and towards the maintenance and education of such child or children respectively; And in case, at any period of such respective minority, or minority and coverture, as the case may be, any sum or sums of money less than the dividends or interest of such expectant portion or respective portions shall be so paid and applied, then, and in every such case, it shall be lawful for the said trustees or trustee to accumulate the surplus of such dividends or interest in augmentation of the capital or principal of the share or respective shares from which the same shall have arisen; but with power, if deemed expedient, to apply such accumulated fund, and the income, if any, arising therefrom, or any part thereof, for and towards and in the increase of the maintenance of any such child or children, at any subsequent period of his or her respective minority, or minority and dis-

Provision for  
maintenance

MONEY  
SETTLEMENT  
ON MARRIAGE.

Provision for  
advancement.

In default of  
children of the  
marriage—

In trust for the  
husband.

coverture, (as the case may be) (*g*). PROVIDED ALSO, and it is hereby further declared, that it shall be lawful for the trustees or trustee for the time being of these presents, with the consent in writing of the said [*intended husband*] and [*intended wife*], or of the survivor of them, and, after the decease of such survivor, then at the discretion of the said trustees or trustee for the time being, to raise any part not exceeding one moiety of the share or portion, or respective shares or portions to which any child or children of the said intended marriage shall be actually or presumptively entitled of and in the trust funds and premises aforesaid, and to apply the money so raised in or towards putting or placing out such child or children respectively in any profession, business, or employment, or otherwise for his, her, or their advancement in the world; so that the monies to be so raised and applied for any such child or children respectively be considered as part of his, her, or their share or portion, or shares or portions under these presents: And in case there shall be no child of the said intended marriage, or such child, or both or all such children (as the case may be), being a son or sons, shall die under the age of twenty-one years, or, being a daughter or daughters, shall die under that age, and without having been married, then as to and concerning the said 8000*l.* Three Pounds *per centum* Reduced Annuities, except such parts thereof respectively as shall have been applied and disposed of under the aforesaid trusts, (then subject and without prejudice to the life interest of the said [*intended wife*], if she shall survive her said [*intended husband*] as aforesaid); *In trust* for the said [*intended hus-*

Remark on the  
provision for  
maintenance.

(*g*) The amount of expenditure required for maintenance and education varies at the different stages of infancy, generally increasing with the age of the object. A sum more than sufficient for a boy of four years, obviously might be inadequate for one of fourteen. Hence, the propriety of enabling the trustees to satisfy the exigency of any given period, by the application of the surplus of former years, which otherwise, probably, would not be warranted, if the accumulation had been made under the authority of an express trust, directing the accessional fund to be added to the capital.

*band*], his executors or administrators, for his absolute use and benefit; and upon or for no other trust, intent, or purpose whatsoever. PROVIDED ALWAYS, and it is hereby further declared, that it shall be lawful for the trustees or trustee for the time being of these presents, with the consent in writing of the said [*intended husband*] and [*intended wife*], or of the survivor of them, and, after the decease of such survivor, then of the proper authority of such trustees or trustee, at any time or times to sell and dispose of the said 8000*l.* Three Pounds *per centum* Reduced Annuities, or any part thereof, and with the like consent, or of the like proper authority, as the case may be, to lay out and invest, in the names or name of such trustees or trustee, the monies arising from such sale and disposition in or upon any like or other Government or Parliamentary stocks or funds of Great Britain, or in or upon any mortgage or mortgages of freehold, copyhold, or leasehold estates in England; and so in like manner from time to time to vary and change the trust funds and securities whereon the produce of the said trust premises shall for the time being happen to be invested, as often as occasion shall require, or it shall be deemed fit so to do; And that all the stocks, funds, and securities, on which such investment shall from time to time be made, and the dividends, interest, and annual produce arising therefrom, shall respectively be held and applied upon, for, and subject to the same or like trusts and purposes, as in and by these presents are expressed concerning the said sum of 8000*l.* Three Pounds *per centum* Reduced Annuities, and the dividends thereof respectively; And further, that the receipt or receipts of the trustees or trustee for the time being of these presents, shall be a sufficient release or discharge for the monies from time to time so to be called in, or to arise from the sale or other disposal of any such stocks, funds, or securities as aforesaid, and shall exempt the person or persons paying the same from all responsibility in respect of the application thereof. PROVIDED ALSO, and it is hereby further declared and agreed [by and between all the said parties to these presents], that if the said [*trustees*], or either of them, or any trustee to be appointed as hereinafter mentioned, shall die or become incapable or be unwilling to act in the trusts hereby created, at any time before

MONEY  
SETTLEMENT  
ON MARRIAGE.

Power to vary  
funds.

Power to ap-  
point new trus-  
tees.

MONEY  
SETTLEMENT  
ON MARRIAGE.

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the same shall be fully executed (*h*), and it shall be deemed advisable to supply the vacancy or vacancies so to be occasioned (*i*), then, and in every such case, and when and so often as the same shall happen, it shall be lawful for the said [*intended husband*] and [*intended wife*], or the survivor of them, and, after the decease of such survivor, for the retiring trustee or trustees, or the executors or administrators of the deceased trustee or trustees, (as the case may be), jointly with the continuing or surviving trustee or trustees, if any, or for some or one of such persons, if the other or others shall be unable or unwilling to exercise this present power, by any writing under their, his, or her hands and seals, or hand and seal, to nominate, substitute, and appoint any other person or persons to be a trustee or trustees for the purposes aforesaid, in the place and stead of them the said trustees or trustee who shall so die or become incapable, or be unwilling to act in the said trusts as aforesaid (*k*); and that when and so often as any new trustee or trustees shall be nominated or appointed as aforesaid, the said 8000*l.* Three Pounds *per centum* Reduced Annuities, or so much and such part thereof as shall remain subject to any of the trusts aforesaid, and all other the trust premises whatsoever which shall be then vested in the trustees or trustee for the time being in virtue of the trusts hereinbefore contained, shall, with all convenient speed, at the costs of the said trust estate, be transferred and assigned and made over, so and in such manner as that the same shall be legally and effectually vested in the surviving or continuing former trustee or trustees, and such new trustee or trustees jointly, or wholly in such new trustees, as the case may require, upon the trusts aforesaid; and that all and every such new trustee and trustees shall and may in all things act in the manage-

Variations.

(*h*) Add, if so intended:—

“or in case it shall be thought fit to increase the number of trustees.”

(*i*) These words are thrown in with a view to obviate the question suggested *ante*, Vol. 6, p. 589.

(*k*) “or as such additional trustee or trustees as aforesaid.”



ment and execution of the trusts aforesaid, as fully and effectually, to all intents and purposes whatsoever, as if he and they had been originally nominated a trustee or trustees in and by these presents, (any thing herein contained to the contrary thereof in anywise notwithstanding). PROVIDED ALSO, and it is hereby further declared (*l*), that the trustees for the time being of these presents shall be charged with such sums only as they respectively shall actually receive by virtue of the trusts herein contained, notwithstanding their joining in or signing any receipt or receipts, or doing any other act for the sake of conformity, and that they or any of them shall not be answerable for any loss which may happen in the execution of the aforesaid trusts, or in relation thereto, (except the same shall happen by or through his, her, or their wilful neglect or default); *And lastly*, that it shall be lawful for the said trustees or trustee for the time being, out of the monies which shall come to their or his hands by virtue of the trusts aforesaid, to retain and also to allow to each other all costs and expenses, and fees to counsel for advice, which they or any of them may pay or incur in or about the execution of the aforesaid trusts, or in relation thereto. IN WITNESS, &c.

MONEY  
SETTLEMENT  
ON MARRIAGE.

Indemnity to  
trustees.

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(*l*) As to the real value of these highly prized indemnity clauses, *vide ante*, Vol. 8, p. 361.

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MARRIAGE SETTLEMENT of BANK and other STOCK and MONEY secured by BOND on the intended HUSBAND, WIFE, and ISSUE. POWER of APPOINTMENT among the ISSUE, and other ORDINARY PROVISIONS. COVENANT by the HUSBAND and WIFE to SETTLE the AFTER-ACQUIRED PROPERTY of the WIFE.

MONEY  
SETTLEMENT  
ON MARRIAGE.

THIS INDENTURE, of three parts, made the — day of —, BETWEEN [*intended husband*], of &c., Esquire, of the first part; [*intended wife*], of &c., spinster, of the second part; and [*trustees*], of &c., of the third part: WHERE- Parties.

MONEY  
SETTLEMENT  
ON MARRIAGE.

Recital of intended marriage.

—That the intended husband is entitled to Bank Stock, &c.

—That wife was entitled to stock.

—Agreement for settlement.

—Transfer of stock to trustees.

Testatum.

AS a marriage is intended shortly to be solemnized between the said [*intended husband*] and [*intended wife*]: AND WHEREAS the said [*intended husband*] is now entitled to the capital sum of 1500*l.*, Bank Stock, which was lately standing in his name in the books of the Governor and Company of the Bank of England: AND WHEREAS, by a certain bond or obligation in writing, under the hand and seal of [*obligor*], of &c., Esquire, bearing date on or about the — day of —, he the said [*obligor*] became bound to the said [*intended husband*] in the penal sum of 4000*l.*, with a condition thereunder written for making void the same bond or obligation, on payment to the said [*intended husband*], his executors, administrators, and assigns, of the sum of 2000*l.*, with interest for the same after the rate of 5*l. per centum per annum*, on the — day of —, then and now next. AND WHEREAS the said [*intended wife*] is now entitled to the capital sum of 4000*l.*, New Three Pounds and a half *per centum* Annuities, which were lately standing in her name in the books of the Governor and Company of the Bank of England. AND WHEREAS, upon the treaty for the said intended marriage, and for making some provision for the parties, and also the issue (if any) of the same marriage, or some or one of such issue, it was proposed and agreed, that the said 1500*l.* Bank Stock, belonging to the said [*intended husband*], and the said sum of 2000*l.* sterling, secured to him by the hereinbefore recited bond or obligation, and also the said 4000*l.* New Three Pounds and a half *per centum* Annuities, belonging to the said [*intended wife*], should be respectively transferred and assigned unto the said [*trustees*], Upon the trusts, and for the intents and purposes hereinafter declared concerning the same; And it was further agreed, that the said [*intended husband*] and [*intended wife*] should enter into such a covenant for settling and assuring the future real and personal estate of the said [*intended wife*], as is hereinafter contained. AND WHEREAS, in pursuance of the said recited agreement, the said Bank Stock and New Three Pounds and a half *per centum* Annuities, have been accordingly, by an order of the said [*intended husband*] and [*intended wife*], respectively transferred into the names of them the said [*trustees*], in the books of the Governor and Company of the Bank of England, as they do hereby severally acknowledge. NOW THIS INDENTURE WITNESSETH,

that, in consideration of the said intended marriage, and in pursuance of the aforesaid agreement on the part of the said [*intended husband*], with respect to the said sum of 2000*l.* secured by the hereinbefore recited bond or obligation, [*And also, in consideration of the sum of 10*s.*, paid by the said [trustees] to the said [intended husband], the receipt whereof is hereby acknowledged (a), He the said [intended husband] Doth by these presents grant, bargain, sell, and assign unto the said [trustees], their executors, administrators, and assigns, ALL THAT the hereinbefore recited bond or obligation under the hand and seal of the said [obligor], and the said principal sum of 2000*l.* thereby secured, and all interest (b) henceforth to grow due in respect thereof; and all the right, title, interest, benefit, and advantage, property, claim, and demand whatsoever, of him the said [intended husband], in, to, or out of the same, or every part thereof. To HAVE, RECEIVE, AND TAKE the said bond or obligation, principal sum and interest, and other the premises hereinbefore expressed to be hereby assigned unto and by the said [trustees], their executors, administrators, and assigns, Upon trust, that the said [trustees], or the survivor of them, his executors or administrators, do and shall lay out and invest the said sum of 2000*l.*, when the same shall be received under or by virtue of the assignment hereinbefore contained, in their or his own names or name, in some or one of the public or Parliamentary Stocks or Funds of the United Kingdom, or on mortgage of freehold, copyhold, or leasehold estates in England; And do and shall stand and be possessed of the said stocks, funds, and securities in which such investment shall be so made, Upon the trusts hereinafter declared concerning the same. And for the considerations aforesaid, and for the better enabling the said [trustees], or the survivor of them, his executors or administrators, to recover and receive the said principal sum of 2000*l.* hereby assigned to them as aforesaid,*

MONEY  
SETTLEMENT  
ON MARRIAGE.

Assignment of  
bond debt for  
2000*l.* and in-  
terest.

*Habendum.*

Letter of attorney to trustees to recover said 2000*l.* on the bond, and interest thereof.

(a) The insertion of a nominal pecuniary consideration in assignments of personal property, is wholly useless. The clause in brackets therefore may be properly omitted.

(b) The interest previously accrued is omitted by design. The next precedent exhibits a different, and, it is conceived, better mode of dealing with it.

MONEY  
SETTLEMENT  
ON MARRIAGE.

and the future interest thereof, he the said [*intended husband*] *Doth* by these presents make, constitute, and appoint them the said [*trustees*], and the survivor of them, his executors or administrators, the true and lawful attornies and attorney of him the said [*intended husband*], for him and in his name, but upon the trusts, and for the intents and purposes hereinafter declared concerning the same, to ask, demand, recover, and receive, by all lawful ways and means whatsoever, of and from the said [*obligor*], his heirs, executors, or administrators, and all and every other person and persons liable to pay the said sum of 2000*l.* secured by the said bond of him the said [*obligor*] hereinbefore assigned, and all interest to grow due for the same; and upon non-payment thereof, or of any part thereof, to bring, commence, and prosecute such actions or suits, either at law or in equity, for the recovery of the same, as shall be found expedient; and on payment or receipt thereof, or of any part thereof respectively, to give sufficient releases, acquittances, and discharges for the same, and which shall exonerate the persons paying such monies from all responsibility in respect of the application thereof; And for all or any of the purposes aforesaid, from time to time, as often as it shall be deemed expedient, to appoint a substitute or substitutes, with power for him or them to exercise all or any of the powers hereinbefore contained, including this present authority (*c*), and

Power to appoint substitutes.

Remark on the power of substitution.

(*c*) The power of appointing substitutes is often found useful when new trustees are nominated; and, on any nomination subsequent to the first, even the authority here given (by a stretch of the ordinary forms,) to the substitute to make a like substitution, may be conveniently resorted to. But, on transferring a *chose en action* to new trustees, it is better not unnecessarily to increase the complexity of the deed, by exercising the powers of substitution, if it can be avoided. If the constituent of the power is a party to the deed of nomination, he may revoke his former power to the old trustees, and give a similar power to the new trustees.

So, where a *chose en action* is to be transferred from a retiring trustee and a continuing trustee to the latter and a new trustee jointly, by means of an intermediate assignment to a third person, it is less circuitous for the retiring trustee at once to appoint the new and continuing trustees his substitutes, than for the *mesne* assignee to be made the attorney under the power of substitution, in order that he may make a similar substitutional nomination in favour of his transferees, *i. e.* the continuing and new trustees. *Vide ante*, Vol. 6, p. 386.



MONEY  
SETTLEMENT  
ON MARRIAGE.

such substitution at pleasure to revoke; And the said [*intended husband*] doth hereby give and grant unto the said [*trustees*], and the survivor of them, his executors or administrators, and their or his substitute or substitutes, full power and authority in and touching the premises; and doth hereby ratify and confirm all and whatsoever they or any of them shall lawfully do or cause to be done therein by virtue of these presents. AND in consideration of the said intended marriage, and of all and singular other the premises, it is hereby declared and agreed by and between the said parties hereto, that the said [*trustees*], and the survivor of them, his executors or administrators, shall from henceforth stand and be possessed of and interested in the said 1500*l.* Bank Stock, and 4000*l.* New Three Pounds and a half *per centum* Annuities, so respectively transferred and assigned to them as aforesaid; and also of the said bond debt or principal sum of 2000*l.* hereinbefore assigned, or of the stocks, funds, and securities on which the same respectively shall or may be invested as aforesaid, IN TRUST for the said [*intended husband*] and [*intended wife*] therein respectively, and their respective executors, administrators, and assigns, according to the respective shares, rights, and interests of them the said [*intended husband*] and [*intended wife*] therein respectively, immediately before the execution of these presents, until the said intended marriage shall be had and solemnized; AND from and immediately after the solemnization thereof, upon the several trusts and for the intents and purposes hereinafter declared concerning the same; (that is to say), *Upon trust* to permit and suffer and empower the said [*intended husband*] and his assigns to receive and take the yearly dividends, interest, or produce thereof respectively, as the same shall become due, to and for his and their own use and benefit, during his life; *And* immediately after his decease, *Upon trust* to permit and suffer and empower the said [*intended wife*], his intended wife, and her assigns, to receive and take the yearly dividends, interest, and produce thereof respectively, as the same shall become due, to and for her and their own use and benefit during her life; And immediately after the decease of the survivor of them the said [*intended husband*] and [*intended wife*], then as to as well the said trust monies, stocks, or securities, as the future yearly dividends, interest, or produce of the same respectively, IN TRUST for all or any

Trust for present owners until the marriage;

After the marriage,

In trust for husband for life, then,

In trust for the wife for life, then,

MONEY  
SETTLEMENT  
ON MARRIAGE.  
—for the chil-  
dren or issue, as  
the parents or  
survivor shall  
appoint.

one or more of the children, or the grandchildren or other issue (*d*) of the said [*intended husband*] and [*intended wife*], (such grandchildren or other issue to be born in the lifetime of the said [*intended husband*] and [*intended wife*], or one of them), for such interest or interests, either present or future, and in such parts, shares, or proportions, and subject to such conditions, restrictions, and limitations over, in favour of any other or others of the said children, grandchildren, or other issue, and with such directions or regulations for maintenance, education, and advancement, and to be transferred or assigned, at such age or ages, either absolutely or upon such contingencies as the said [*intended husband*] and [*intended wife*], his said intended wife, shall at any time, or from time to time during their lives, by any deed or deeds to be executed by them in the presence of two or more witnesses, and to be attested by the same witnesses, and to be made either with or without power of revocation and new appointment, or as the survivor of them shall at any time or from time to time, (and as to the said [*intended wife*], notwithstanding her coverture by her intended or any future husband), by any deed or deeds, to be executed in the presence of and attested by the like number of witnesses, and to be made either with or without power of re-

As to the extension of the power of appointment to the issue.

(*d*) It is by no means general in marriage settlements to extend the powers of appointment of the husband and wife to issue more remote than children, which is remarkable, considering the great and obvious utility of such an extension of it. The restriction of the power to children is especially inconvenient, where a child has died in the lifetime of the father or mother, leaving issue. In such a case, the only mode of providing for the issue is by leaving a share unappointed, when, supposing the deceased parent to have acquired a vested interest in his share, and the issue to be interested in his personal estate, they will take the unappointed share; but, as this may not be the case, and as other circumstances may occur in the situation of any child, such as bankruptcy, insanity, &c., rendering the substitution of his issue an extremely desirable measure, the power should always, as a matter of course, be extended to issue of every degree. It cannot be exercised in favour of issue not born within a life in being and twenty-one years; but it is not essential to the validity of the power, that it be in terms so restricted. It is enough that the limits prescribed by law are observed in the appointment by which it is exercised. *Routledge v. Dorrell*, 2 Ves. jun. 357.

vocation and new appointment, or by his or her last will and testament, or any codicil or codicils thereto, to be respectively signed and published by such survivor, in the presence of and to be attested by two or more witnesses, direct or appoint; and in default of such direction or appointment, and subject to the said power of appointment, and to any appointment or appointments to be made under the same, which shall not be a complete disposition of the whole of the said trust funds, **IN TRUST** for all and every the child and children of the said [*intended husband*] and [*intended wife*], his intended wife, who, being a son or sons, shall attain the age of twenty-one years, or, being a daughter or daughters, shall attain that age or marry, equally between or amongst them, (if more than one), share and share alike, and, if there shall be but one such child, then, the whole to such only child; the share or shares of such of them as shall be a son or sons to be paid or transferred to him or them at his or their respective ages of twenty-one years, and the share or shares of such of them as shall be a daughter or daughters to be transferred and paid to her or them, at her or their age or respective ages of twenty-one years, or day or respective days of marriage, which shall first happen, or as soon after that event as the decease of the survivor of them the said [*intended husband*] and [*intended wife*] shall admit of; but, in case there shall not be any children or child of the said intended marriage, or, there being any such, he, she, or they, being a son or sons, shall die under the age of twenty-one years, or, being a daughter or daughters, shall die under that age, and unmarried, then, as to, for, and concerning the said 1500*l.* Bank Stock, and the said bond debt of 2000*l.*, or the stocks, funds, and securities wherein the produce thereof respectively may then happen to be invested, or so much thereof as shall not have become vested in any child or children, or the issue of any child or children, under any such appointment as aforesaid, or have been disposed of for the advancement of any child or children or issue as hereinafter mentioned(e), *In trust* for the said [*intended husband*], his exe-

**MONEY  
SETTLEMENT  
ON MARRIAGE.**

And in default  
of appointment.

To the children  
equally.

In default of  
children of the  
marriage—

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(e) In framing the ultimate limitation of a marriage settlement, regard is usually had to the original ownership; for, when the purposes of As to the ultimate limitation.

MONEY  
SETTLEMENT  
ON MARRIAGE.

As to certain  
part in trust for  
the husband.

As to other  
part, upon  
trusts for the  
benefit of the  
wife.

cutors, administrators, and assigns, to and for his and their own use and benefit; AND as to, for, and concerning the said 4000*l*. New Three Pounds and a half *per centum* Annuities, or the stocks, funds, and securities wherein the produce thereof shall happen to be invested, or so much thereof whereof there shall have been no such direction or appointment or advancement as aforesaid, in case the said [*intended husband*] shall die in the lifetime of the said [*intended wife*], *In trust* for her the said [*intended wife*], her executors, administrators, and assigns, to and for her and their own use and benefit; *But in case* the said [*intended wife*] shall die in the lifetime of the said [*intended husband*], then, *In trust* for such person or persons, upon such trusts and to and for such intents and purposes, in such parts, shares, and proportions, and in such manner and form in all respects as the said [*intended wife*] shall at any time or times, notwithstanding her intended coverture, by any writing or writings, with or without power of revocation and new appointment, to be by her sealed and delivered in the presence of and attested by two or more credible witnesses, or by her last will and testament in writing, or any codicil thereto, or any writing purporting to be or in the nature of her last will and testament or codicil, to be by her signed and published in the presence of and attested by the like number of credible witnesses, direct or appoint; AND, in default of such direction or appointment, THEN, *In trust* for the person or persons who would, by virtue of the statute of distributions, be entitled to the personal estate of the said [*intended wife*], if she had

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providing for the husband, wife, and issue have been answered or disappointed, it seems, in general, fair that the property should return to its former possessor. Where the settlement comprises property respectively contributed by the husband and wife, the ultimate trust on failure of children is either commonly framed on this principle, the aggregate fund being broken into its original component parts for the purpose, as in the precedent in the text, or the entire fund is given to the survivor. The precedent would then be varied as follows—

Variation where  
the ultimate li-  
mitation is to  
the survivor.

“*In trust* for the survivor of them the said [*intended husband*] and [*intended wife*], his or her executors, administrators, and assigns, to or for his or her own absolute use and benefit.”



died intestate, and without leaving a husband, and, if more than one, in the like shares, and upon, to, or for no other trust, intent, or purpose whatsoever. PROVIDED ALWAYS, and it is hereby declared, that no child or children who shall take any share or shares of the said trust monies, stocks, funds, or securities, under any appointment or appointments to be made to any such child or children, under the powers hereinbefore contained, or either of them, shall (unless the same shall be expressly directed by any such appointment or appointments,) be entitled to any share of the unappointed part of the said trust monies, stocks, funds, or securities, unless the said child or children shall bring the share or shares appointed to him or them into hotchpot or distribution with the other child or children, and make an allowance for the same, any rule of law or equity to the contrary notwithstanding. PROVIDED ALSO, and it is hereby further declared, that, in case, at the decease of the survivor of them the said [*intended husband*] and [*intended wife*], any of the children, grandchildren, or other issue of the said intended marriage, who, under the trusts hereinbefore contained, or under any appointment or appointments to be made in his, her, or their favour, by virtue of the powers hereinbefore contained, or either of them, shall be entitled to any vested or presumptive share or respective shares of the said trust monies, stocks, funds, or securities, shall, being a male or males, not have attained the age of twenty-one years, or, being a female or females, not have attained that age or been married, then, (subject and without prejudice to any direction or regulation which may be made by any such appointment or appointments), it shall be lawful for the trustees or trustee for the time being of this settlement, in their or his discretion, from time to time after the decease of the survivor of the said [*intended husband*] and [*intended wife*], to apply all or any part of the yearly dividends, interest, or annual produce of the share or presumptive share of each such child, grandchild, or issue, being a male, during his minority, and, being a female, during her minority and discover-  
ture, in or towards his or her maintenance and education, or otherwise for his or her benefit, in such manner as the said trustees or trustee shall think proper; and that, subject as aforesaid, so much, if any, of the dividends, interest, or an-

MONEY  
SETTLEMENT  
ON MARRIAGE.

Distribution  
clause.

Provision for  
maintenance

MONEY  
SETTLEMENT  
ON MARRIAGE.

Provision for  
advancement.

nual produce arising from the share or presumptive share of each such child, grandchild, or issue respectively, as shall not be so applied as aforesaid, shall be improved at interest and accumulated, and the accumulations thereof be added to the principal of the share whence the same shall have arisen, and be subject to all the trusts, provisions, and agreements affecting the same share; but, nevertheless, it shall be lawful for the said trustees or trustee, in their or his discretion, to apply the whole or any part of such accumulated fund in or towards the subsequent or future maintenance and education of the respective child from whose share or presumptive share the same may have arisen. PROVIDED ALSO, and it is hereby further declared, that it shall be lawful for the said trustees or trustee for the time being, during the lives of the said [*intended husband*] and [*intended wife*], and the life of the survivor of them, with their, his, or her consent in writing, and after the death of such survivor, then, in the discretion of the said trustees or trustee, (subject, nevertheless, to any contrary direction or regulation in any such appointment or appointments which may be made as aforesaid), to apply any part, not exceeding one half of the principal or value of the vested or presumptive share of each or any of the children, grandchildren, or issue of the said intended marriage, in or towards the advancement or preferment in the world, or otherwise for the benefit of the child, grandchild, or issue, to whom each such share shall actually or presumptively belong. PROVIDED ALSO, and it is hereby further declared, that it shall be lawful for the trustees or trustee for the time being of this settlement, at any time or times hereafter, with the consent in writing of the said [*intended husband*] and [*intended wife*], or the survivor of them; and, after the decease of such survivor, of their or his own proper authority, to sell, transfer, and dispose of the stocks, funds, and securities for the time being composing the trust property vested in the said trustees or trustee by virtue of these presents, and with the like consent, or of the like authority as aforesaid, to lay out and invest the produce thereof in the purchase of other parliamentary or public securities of the United Kingdom, or on real securities in England; And that, at every such sale, disposition, or transfer, and on every other occasion, the person or persons paying any sum or sums

Power to vary.

Exoneration to  
persons paying  
monies.

of money to the trustees or trustee for the time being of this settlement, shall be exonerated from all responsibility in respect of the application thereof. PROVIDED, NEVERTHELESS, and it is hereby further declared, that it shall not be imperative or incumbent on the said trustees or trustee for the time being of this settlement, to call in or enforce the payment of the said principal sum of 2000*l.* secured by the said bond or obligation hereinbefore assigned, when the same shall become payable, according to the tenor of the condition of the same bond, unless required so to do by a notice in writing from the said [*intended husband*] and [*intended wife*], or one of them, any rule of law or equity to the contrary notwithstanding (*f*); but, nevertheless, it is hereby declared that this present provision shall not be construed in any manner to restrict the power or discretion of the said trustees or trustee, to bring any action at law, or institute any other proceedings upon or by virtue of the same bond, when they or he shall think proper so to do. AND THIS INDENTURE ALSO WITNESSETH, that, in pursuance of the said recited agreement in this behalf, and in consideration of the said intended marriage, It is hereby further declared by the several parties hereto, and each of them the said [*intended husband*] and [*intended wife*], for himself and herself, his and her heirs, executors, and administrators, doth hereby covenant and agree with the said [*trustees*], their executors and administrators, that all the estate, property, and effects whatsoever, both real and personal, which the said [*intended husband*] and the said [*intended wife*], his intended wife, or either of them in her right, shall, at any time or times during the said intended coverture, become seised or possessed of or entitled to, either at law or in equity, under any gift, devise, or bequest in her favour, or by descent, representation, or any other means whatsoever, shall be assured and settled, and that the said [*intended husband*] and [*intended wife*] respectively, at the costs and charges of the said trust estate, shall do and execute, and concur in doing and executing, all such acts and deeds whatsoever as to the said [*trustees*], or the survivor of

MONEY  
SETTLEMENT  
ON MARRIAGE.

Trustees not to  
be obliged to  
sue.

Further testa-  
tum.

Covenant by the  
husband to set-  
tle the wife's  
after-acquired  
property.

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(*f*) *Vide Ex parte Mure*, 2 Cox, 63, stated *ante*, Vol. 6, p. 34.

MONEY  
SETTLEMENT  
ON MARRIAGE.

them, his executors or administrators, or their or any of their counsel in the law, shall be reasonably advised and required, for assuring and settling the same and every part thereof, for all the estate and interest of the said [*intended husband*] and [*intended wife*], or either of them, upon the same trusts, and for the same intents and purposes, and under and subject to the same powers, provisoes, and agreements, as are hereinbefore expressed and declared concerning the said 4000*l.* New Three Pounds and a half *per centum* Annuities hereby settled, or such of the said trusts, intents, and purposes, powers, provisoes, and agreements, as shall then be subsisting or capable of being executed, or as near thereto as the nature of the property and other circumstances will admit of: And that, until the said estate, property, and effects shall be so settled and assured as aforesaid, the same shall be subject to such trusts, powers, provisoes, and agreements as aforesaid, and shall be enjoyed accordingly. (*Add powers to the husband and wife and the survivor, and, after the decease of such survivor, for the trustees themselves, to appoint new trustees, and the usual indemnity clauses, ut ante, p. 131*). IN WITNESS, &c.



TRANSFER of MORTGAGE *previously to Marriage, upon Trusts, which are declared by a separate Deed, (next Precedent) (a).*

TRANSFER OF  
MORTGAGE,  
ON MARRIAGE.

**THIS INDENTURE**, made the — day of —, in the year of our Lord —, BETWEEN [*intended wife*], of &c., of the first part; [*intended husband*], of &c., of the second part; and [*trustees*], of &c., of the third part. WHEREAS, by indentures of lease and release, (*recite mortgage*). AND WHEREAS the said principal sum of 2000*l.* is now owing, by virtue of the said recited indentures, with interest thereon from the — day of —. AND WHEREAS a marriage hath been agreed upon and is intended to be shortly solemnized between the said [*intended husband*] and [*intended wife*]; and, upon the treaty for the said intended marriage, it was (amongst other things) agreed that the said sum of 2000*l.*, and the interest thereon, and the securities for the same, should be assigned and made over to the said [*trustees*], their executors, administrators, and assigns, in the manner and for the purposes hereinafter mentioned or referred to. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the said intended marriage, she the said [*intended wife*], with the privity and approbation of the said [*intended husband*], (testified by his sealing and delivering these presents), *Doth* by these presents bargain, sell, assign, transfer, and set over unto the said [*trustees*], their executors, administrators, and assigns, ALL THAT the said sum of 2000*l.*, by the said recited indenture of the — day of — secured to the said [*intended wife*], her executors, adminis-

Parties.

Recital of mortgage.

—Of monies due;

—Of intended marriage;

—and of agreement that the money secured should be assigned to trustees, on the trusts after referred to.

The intended wife, with the privity of the intended husband, assigns the principal sum due on the mortgage to trustees.

(a) It is often convenient to indorse the separate transfer on the mortgage deed, which prevents the necessity of its being recited, and precludes the possibility of its becoming separated and lost. The precedent, of course, can easily be accommodated to such a case.

TRANSFER OF  
MORTGAGE,  
ON MARRIAGE.

*Habendum.*

Power of attorney by intended husband and wife to trustees.

trators, and assigns, as hereinbefore is mentioned, and all the interest now due and henceforth to become due for the same, and the full benefit and advantage of all the covenants contained in the same indenture, for the payment of the said sum of 2000*l.*, and the interest thereon. And all the right, title, interest, benefit, claim, and demand whatsoever, both at law and in equity, of her the said [*intended wife*], in, to, out of, or upon the said sum and interest hereinbefore assigned or intended so to be, and every part thereof respectively: To HOLD, RECEIVE, AND TAKE the said sum and interest, and all other the premises hereinbefore assigned or intended so to be, unto the said [*trustees*], their executors, administrators, and assigns, *In trust* for the said [*intended wife*], her executors, administrators, and assigns, until the said intended marriage shall be had and solemnized; and immediately after the solemnization thereof, upon such trusts, and for such intents and purposes, and under and subject to such powers, provisoes, declarations, and agreements, as are or shall be expressed and declared of and concerning the same sum and interest, by a certain indenture already prepared, and intended to bear even date with these presents, and to be made between the said [*intended husband*], of the first part, the said [*intended wife*], of the second part, and the said [*trustees*], of the third part (*b*). AND the said [*intended husband*] and [*intended wife*] Do, and each of them Doth, hereby irrevocably make, nominate, and appoint the said [*trustees*], and the survivor of them, his executors or administrators, to be the true and lawful attornies and attorney of the said [*intended husband*] and [*intended wife*], and each of them, in their or either of their names or name, at any time or times after the solemnization of the said intended marriage, to ask, demand, sue for, recover, and receive of and from all and every persons and person who are, is, or shall or may be liable to pay the same respectively, the sum and interest hereinbefore assigned or intended so to be, and on payment thereof, or of any part thereof respectively, to give, sign, and execute receipts, acquittances, releases, or other discharges for the same respectively; and, on non-pay-

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(*b*) The deed here referred to is the next precedent. (*Vide post*, p. 150).

TRANSFER OF  
MORTGAGE,  
ON MARRIAGE.

ment thereof, or of any part thereof respectively, to bring, commence, carry on, and prosecute any action, suit, or other proceeding whatsoever, for recovering and compelling the payment thereof respectively; and generally, to do, execute, and perform any other act, deed, matter, or thing whatsoever, relating to the premises, as fully and effectually, to all intents and purposes whatsoever, as the said [*intended husband*] and [*intended wife*], or either of them, might or could have done in their or his own proper persons or person, in case these presents had not been executed; And, for all or any of the purposes aforesaid, to appoint a substitute or substitutes, and such substitution from time to time at pleasure to revoke; And whatsoever the said attornies or attorney, or their or his substitute or substitutes, shall lawfully do or cause to be done in or about the premises, the said [*intended husband*] and [*intended wife*] Do hereby jointly, for themselves, their heirs, executors, and administrators, and each of them Doth hereby separately, for himself and herself, and his and her heirs, executors, and administrators, covenant and agree with [*trustees*], their executors, administrators, and assigns, to allow, ratify, and confirm, and that they the said [*intended husband*] and [*intended wife*] respectively will not attempt to revoke or annul the power and authority hereinbefore contained; AND it is hereby agreed and declared between and by the parties to these presents, that the receipt or receipts in writing of the said [*trustees*], or the survivor of them, his executors or administrators, or their or his assigns, for the said sum and interest hereinbefore assigned or intended so to be, or any part thereof respectively, shall effectually discharge the person or persons paying the same from being answerable or accountable for the misapplication or non-application thereof, or from being obliged or concerned to see to the application thereof. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said recited agreement, and for the consideration hereinbefore mentioned, and also in consideration [*nominal money consideration*], she the said [*intended wife*], with the privity and approbation of the said [*intended husband*], testified as aforesaid, Doth by these presents bargain, sell, and release unto the said [*trustees*], their heirs and assigns, (in the actual possession, &c.), All and

Receipts of trustees to be sufficient discharges.

Further *testamentum*.

Intended wife conveys the mortgaged premises.

TRANSFER OF  
MORTGAGE,  
ON MARRIAGE.

And all the estate, &c.

*Habendum.*

Covenants by  
intended wife.

That she has a  
right to assign.

—That she has  
not incumbered.

And for further  
assurance.

singular the —— and hereditaments hereinbefore described, and all other the premises which by the hereinbefore recited indentures of the —— and —— days of —— were conveyed and assured to the said [*intended wife*], her heirs and assigns. AND all the estate, right, title, interest, possibility, property, claim, and demand whatsoever, both at law and in equity, of her the said [*intended wife*], in, to, or out of the said hereditaments and premises hereby released or intended so to be: TO HAVE AND TO HOLD the said —— hereditaments, and all other the premises hereby released or intended so to be, with their rights, members, and appurtenances, unto and TO THE USE of the said [*trustees*], their heirs and assigns, for ever, but subject to such right, title, and equity of redemption (if any) as is or from time to time shall be subsisting in respect of the same —— hereditaments and premises, under or by virtue of the proviso for redemption contained in the hereinbefore recited indenture of the —— day of ——.

AND the said [*intended wife*] doth hereby, for herself, her heirs, executors, and administrators, covenant and agree with the said [*trustees*], their heirs, executors, administrators, and assigns, in manner following; (that is to say), that she the said [*intended wife*] now hath in herself good right, full power, and lawful and absolute authority, to assign the said sum and interest hereinbefore assigned or intended so to be, unto the said [*trustees*], their executors, administrators, and assigns, in manner aforesaid, and according to the true intent and meaning of these presents; *And also*, that she the said [*intended wife*] hath not, at any time heretofore, made, done, or executed, or knowingly suffered, any act, deed, matter, or thing whatsoever, by means whereof the said —— hereditaments and premises hereby released or intended so to be, or any part thereof, are or is charged, incumbered, or in anywise affected in title, estate, or otherwise howsoever.

*And lastly*, that she the said [*intended wife*], and her heirs, executors, or administrators, and every other person claiming by, from, or under, or in trust for her or them, shall and will, at all times after the solemnization of the said intended marriage, upon every reasonable request, and at the costs and charges (c) of the said [*trustees*], or the survivor of

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(c) The fact that the covenantees are trustees affords no reason for departing from the ordinary language of these covenants, which throws



them, his heirs, executors, or administrators, or their or his assigns, make, do, and execute, or cause to be made, done, and executed, all such further and other lawful and reasonable acts, deeds, assurances, and things, for the better and more effectually assigning, assuring, and confirming of the said sum and interest hereinbefore assigned or intended so to be, unto the said [*trustees*], their executors, administrators, and assigns, and also for enabling them to receive, recover, and enforce the payment thereof respectively, upon the trusts aforesaid, and also for conveying and assuring the said — and hereditaments hereby released, or intended so to be, unto and to the use of them the said [*trustees*], their heirs and assigns, for ever, in manner aforesaid, according to the true intent and meaning of these presents, as by the said [*trustees*], their heirs, executors, administrators, or assigns, or their or any of their counsel in the law, shall be reasonably devised, advised, and required. (*Add power to appoint new trustees*, ut ante, p. 131) (*d*). IN WITNESS, &c.

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upon the persons requiring assurances the expense of making them; because, any expense so incurred would, of course, be allowed the trustees, as part of the trust expenditure; and, to provide generally, that the assurances shall be at the cost of the trust estate, is wrong, because the benefit of the covenant may, by means of a transfer from the trustees, have passed into other hands.

(*d*) The insertion of a power to this effect, (which should correspond with the power in the settlement), prevents the necessity of producing the settlement, in case new trustees are appointed under the power, while the mortgage forms part of the trust property, or of any contrivance (*ut ante*, Vol. 6, p. 381) being resorted to, in order to avoid that necessity.

OF MORTGAGE  
DEBT, LEGACY,  
AND POLICY  
OF ASSURANCE.

SETTLEMENT *of* MORTGAGE DEBT; *of* a PORTION *under a Will*; and a POLICY *of* LIFE INSURANCE, *for the Benefit of the* HUSBAND, WIFE, and CHILDREN *of the intended Marriage*; with ORDINARY and some rather SPECIAL PROVISIONS, including Power to the WIFE to make a SETTLEMENT on the HUSBAND and ISSUE of any FUTURE MARRIAGE; also to the Trustees, to INVEST Trust Monies in the PURCHASE of LANDS; to LEND a definite Sum to the HUSBAND; and for keeping on Foot the POLICY of INSURANCE. Also, COVENANT by the HUSBAND to make a JOINTURE SETTLEMENT in Satisfaction of Dower (a).

Parties.

THIS INDENTURE, made the — day of —, BETWEEN [*intended husband*], of &c., of the first part; [*in-*

Remarks on the precedent in the text.

(a) This precedent not only comprises several species of property, and contains various provisions not to be found in the former precedents, but exhibits a different mode of effecting objects substantially the same. Thus, the children's shares, in default of appointment, are made to vest on their respective births, subject to be divested in the event of their dying before majority or marriage, instead of the original vesting being postponed until such age or event. Those who think conciseness without obscurity the perfection of conveyancing, will prefer the method of the former precedents; while, on the other hand, practitioners who are disposed to admit greater explicitness into their forms, (either from their own conviction of its utility, or in deference to the practice of their predecessors), will be better pleased with the present. The immediate vesting of shares is sometimes preferred, on account of its making the children the actual owners for the time being; but, I am not aware of this being attended with any advantage in regard to personalty, or any other species of property not possessing the destructible quality of a contingent remainder. Care should always be taken to make the provisions for maintenance and advancement apply to the expectant shares, according to their actual condition, whether vested or contingent.

*tended wife*], of &c., (one of the daughters of [*deceased father*], late deceased, and a legatee named in his will), of the second part; and [*two trustees*], of &c., of the third part.

OF MORTGAGE  
DEBT, LEGACY,  
AND POLICY  
OF ASSURANCE.

WHEREAS a marriage hath been agreed upon, and is intended shortly to be had and solemnized between the said [*intended husband*] and [*intended wife*]. AND WHEREAS the said [*intended wife*] is absolutely entitled to the sum of 2000*l.*, secured by indentures of lease and release, by way of mortgage, bearing date the — and — days of — last respectively, made between [*mortgagor*], of —, of the one part, and the said [*intended wife*], of the other part, whereby certain lands and hereditaments in the county of — were conveyed and assured by the said [*mortgagor*] unto and to the use of the said [*intended wife*], her heirs and assigns, for ever, subject to redemption on payment of the said principal sum of 2000*l.* and lawful interest, on which said principal sum the interest has been paid to the — day of — last. AND WHEREAS the said [*intended wife's father*] duly made and published his last will and testament in writing, bearing date on or about the — day of —, and did thereby give and devise all his freehold and copyhold messuages, lands, tenements, hereditaments, and premises, whatsoever and wheresoever, unto his the said testator's eldest son [*son*], and his assigns, for the term of his natural life, with divers remainders over; and the said testator thereby bequeathed to his said daughter, [*intended wife*], the sum of 2500*l.*, payable at the age of twenty-four, and also, pecuniary legacies to his other daughters, and his younger sons therein named; And reciting that the said testator's personal estate was not sufficient for the payment of the legacies to his younger children, with the other legacies therein given, the said testator did therewith subject and charge all his freehold and copyhold hereditaments, with full power to his executors, by sale or mortgage of any part or parts thereof, to raise the whole amount of such deficiency; and the said testator did thereby, lastly, appoint [*executors*], executors of his said will. AND WHEREAS the said testator departed this life on or about the — day of —, without having revoked or altered the hereinbefore recited bequest contained in his said will; which said will and certain codicils thereto have been since duly proved in the Prerogative

Recital of intended marriage.

—Of wife's mortgage.

—Of will giving the legacy.

Death of testator.

OF MORTGAGE  
DEBT, LEGACY,  
AND POLICY  
OF ASSURANCE.

Policy of assurance on the intended husband's life.

Agreement for the settlement.

Transfer of mortgage.

Court of the Archbishop of Canterbury. AND WHEREAS the said [*intended wife*] hath not yet attained the age of twenty-four years, being of the age of twenty-three years, or thereabouts. AND WHEREAS, by a certain policy of assurance, bearing date on or about the — day of —, under the hands and seals of — of the directors of the — Insurance Office, and numbered —, the sum of 1000*l.* was assured to be paid to the executors, administrators, or assigns of the said [*intended husband*], within — months after his decease, subject, in the meantime, to the payment of the annual premium, and to the observance of certain conditions and stipulations therein mentioned. AND WHEREAS, upon the treaty for the said intended marriage, it was agreed that the said mortgage debt of 2000*l.* and interest, and also the said legacy or sum of 2500*l.*, bequeathed to the said [*intended wife*] by the will of the said [*intended wife's father*], deceased, and also the hereinbefore recited policy of assurance, should be respectively transferred and assigned to and vested in the said [*trustees*], their executors, administrators, and assigns, upon and for the trusts, intents, and purposes hereinafter declared concerning the same. AND WHEREAS, in pursuance of the said recited agreement, the said [*intended wife*], by indentures of lease and release and assignment (*b*), the lease bearing date the day next before the day of the date of the release and assignment, and the release and assignment bearing even date with these presents, and made or expressed to be made between the said [*intended wife*], of the first part, the said [*intended husband*], of the second part, and the said [*trustees*], of the third part, the said mortgaged hereditaments and premises, and the said principal sum of 2000*l.* thereby secured, have been conveyed, transferred, and assigned to the said [*trustees*], their heirs, executors, administrators, and assigns respectively; and it was by the said indenture of release and assignment declared and agreed that they the said [*trustees*], their executors, administrators, and assigns, should stand and be possessed of the said sum of 2000*l.*, with the interest thereon, Upon such trusts, and for such intents and purposes, and under and subject to such powers, provisoes, declarations, and agree-

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(*b*) Last precedent, *ante*, p. 145.



OF MORTGAGE  
DEBT, LEGACY,  
AND POLICY  
OF ASSURANCE.

*Testatum.*

Declaration of  
trusts of mort-  
gage debt.

Trust for the  
wife, until the  
marriage.

—After mar-  
riage, to conti-  
nue security, or  
change the  
same, with con-  
sent.

For the sepa-  
rate use of wife,  
during cover-  
ture.

ments, as were or should be expressed and declared of and concerning the same sum and interest by a certain indenture therein mentioned to be already prepared, and intended to bear even date therewith, meaning thereby this present indenture (c). **NOW THIS INDENTURE WITNESSETH**, that, in consideration of the said intended marriage, and all and singular other the premises, It is hereby agreed and declared by and between the said parties hereto, that the said [*trustees*], their executors, administrators, and assigns, shall from henceforth stand and be possessed of the said sum of 2000*l.* and interest as aforesaid so assigned to them as hereinbefore mentioned, upon the trusts and for the intents and purposes hereinafter expressed and declared concerning the same; that is to say, *In trust* for the said [*intended wife*], her executors, administrators, and assigns, until the said intended marriage shall be had and solemnized, and from and after the solemnization thereof, *Upon trust* that they the said [*trustees*], and the survivor of them, his executors or administrators, shall and do continue the said sum of 2000*l.* on the present security, or, with the consent in writing of the said [*intended husband*] and [*intended wife*], or the survivor of them, and, after the decease of such survivor, then of the proper authority of such trustees or trustee, call in the said principal money, and again lay out the same in their or his own names or name, either upon any other mortgage or mortgages of freehold, copyhold, or leasehold estates, or any other real securities in England, Wales, or Ireland, or upon the public or parliamentary securities of Great Britain and Ireland; and from time to time, with such consent or of such proper authority as aforesaid, alter and transpose the funds and securities on which the said trust monies for the time being shall be invested, as often as occasion shall require, or it shall be deemed expedient; And as to all and singular the said trust monies, stocks, funds, and securities, *Upon trust* that the said [*trustees*] and the sur-

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(c) The mortgage is assigned by a separate deed, in order that the title to the mortgaged lands may not be involved in the present trusts; and in order, too, that such separate deed may be delivered up as a muniment belonging to the lands, when the mortgage debt is paid off or transferred.

OF MORTGAGE  
DEBT, LEGACY,  
AND POLICY  
OF ASSURANCE.

After the de-  
cease of hus-  
band or wife—  
In trust for the  
survivor for life.

After the death  
of the survi-  
vor—

In trust for the  
children, as the  
parents or the  
survivor shall  
appoint.

vivor of them, his executors or administrators, shall and do from time to time during the joint lives of the said [*intended husband*] and [*intended wife*], receive the interest, dividends, and annual produce thereof, (together with the arrear of interest already due on the said principal sum of 2000*l.* (*d*), and pay the same into the proper hands of the said [*intended wife*], for her sole and separate use and benefit, independently of the said [*intended husband*], her intended husband, and so that the same be not subject to his debts, contracts, or engagements; and the receipt or receipts in writing of the said [*intended wife*], or of such person or persons as she shall from time to time direct or appoint to receive all or any part of the said interest, dividends, and annual produce, to be from time to time, notwithstanding her coverture, a good and sufficient release and discharge for such sum or sums of money as in such receipt or receipts shall be expressed or acknowledged to be received; but so, nevertheless, that the said [*intended wife*] shall have no power to alien or anticipate the future or accruing payments of the same interest, dividends, and annual produce; And after the decease of either of them the said [*intended husband*] and [*intended wife*], UPON TRUST that they the said [*trustees*], and the survivor of them, his executors or administrators, shall and do permit and suffer or authorize and empower the survivor of them the said [*intended husband*] and [*intended wife*] to receive and take the interest, dividends, and annual produce of the said trust monies and premises, for his or her own use and benefit during his or her life; and, after the decease of the survivor of them the said [*intended husband*] and [*intended wife*], UPON TRUST that they the said [*trustees*], and the survivor of them, his executors or administrators, shall and do stand possessed of and interested in the said trust monies and premises, and the interest, dividends, and annual produce thereof, *In trust* for the child, or, if more than one, all or any one or more of the children (*e*)

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(*d*) The interest for the by-gone period should either be paid to the first *cestui que trust* or left altogether out of the settlement, otherwise, it becomes subject to the trusts affecting the principal, which is inconvenient, and contrary to the intention.

(*e*) Here, it will be observed, the power is restricted to children, and does not extend to issue of every degree, *ut ante*, p. 138.

of the said [*intended husband*], on the body of the said [*intended wife*] to be begotten, to be vested in and to be paid and transferred to such child or children respectively, at such age, days, or times, and in such shares and proportions, and subject to such conditions, charges, and limitations over, (such conditions, charges, and limitations over, to be for the benefit of some or one of the said children), as they the said [*intended husband*] and [*intended wife*] at any time or times during their joint lives, by any deed or deeds, writing or writings, with or without power of revocation and new appointment, to be sealed and delivered by them both, in the presence of and attested by two or more credible witnesses, shall jointly direct or appoint; and for want of such direction or appointment, Then, as the survivor of them the said [*intended husband*] and [*intended wife*], by any deed or deeds, writing or writings, with or without power of revocation and new appointment, to be by him or her sealed and delivered in the presence of and to be attested by two or more credible witnesses, or by his or her last will and testament in writing, or by any writing in the nature of or purporting to be his or her last will and testament, or any codicil or codicils thereto, to be by him or her signed and published in the presence of and to be attested by three or more credible witnesses, shall alone direct or appoint; and, for want of such direction or appointment, *In trust* for the child, or, if more than one, all and every the children of the said [*intended husband*] and [*intended wife*], equally to be divided between or among them, share and share alike, the share or shares of such child or children as shall be a son or sons, to be paid or transferred to him or them respectively, at his or their age or respective ages of twenty-one years; and the share or shares of such child or children as shall be a daughter or daughters, to be paid or transferred to her or them respectively, at her or their age or respective ages of twenty-one years, or day or respective days of marriage, which shall first happen, if the same shall respectively happen after the decease of the survivor of them the said [*intended husband*] and [*intended wife*]; but, if the same happen in the lifetime of the said [*intended husband*] and [*intended wife*], or of the survivor of them, then immediately after the decease of such survivor. PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said parties hereto, that,

OF MORTGAGE  
DEBT, LEGACY,  
AND POLICY  
OF ASSURANCE.

In default of  
appointment, for  
children equal-  
ly.

Distribution  
clause, in case

OF MORTGAGE  
DEBT, LEGACY,  
AND POLICY  
OF ASSURANCE.  
of a partial ap-  
pointment.

Clause of sur-  
vivorship and  
accruer.

in case any appointment shall be made in pursuance of the powers hereinbefore contained, or either of them, which shall only extend to a part or parts of the trust premises, such appointment shall be valid and effectual, notwithstanding the non-appointment of the remaining part or parts thereof; but, in that case, any child entitled to a share under such appointment shall be entitled to no further share of and in the remaining or unappointed part or parts of the trust premises, unless and until he or she shall have brought his or her appointed share into hotchpot, unless the person or persons making such appointment should declare a contrary intention in writing (*f*). PROVIDED ALSO, and it is hereby further agreed and declared, that, if any of the children of the said intended marriage, being a son or sons, shall die under the age of twenty-one years, or, being a daughter or daughters, shall die under that age without being or having been married, whether in the lifetime of the said [*intended husband*] and [*intended wife*] or the survivor of them, or after the decease of such survivor, Then (subject to an appointment which shall be made by virtue of either of the powers hereinbefore contained,) the share or shares of him, her, or them so dying, of and in the said trust monies and premises, as well original as accruing under this present trust, or so much thereof as shall not have been applied for the advancement of any such son or sons, pursuant to the power hereinafter in that behalf given, shall go and accrue to the survivors or survivor of the said children, and the executors, administrators, and assigns of such of them (if any) as shall be then dead, having first acquired an absolute and indefeasible interest or interests in his, her, or their original share or shares thereof, and shall, if more than one, be equally divided between or amongst such survivors or survivor of them, and the said representatives of such of them (if any) as shall be then dead as aforesaid, share and share alike, (such representatives taking only the share or shares which such deceased child or children would have taken if living), and the share or shares so surviving or accruing as afore-

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(*f*) These clauses are similar in principle to, and probably were suggested by, the hotchpot provision in the statute of distributions, 22 & 23 Car. 2, c. 10.



said, shall be payable and transferable respectively at such and the same respective ages and times as are hereby provided and declared concerning his, her, or their original share or shares: PROVIDED ALSO, and it is hereby further declared, that, in case there shall be any child or children of the said intended marriage living at the time of the decease of the survivor of them the said [*intended husband*] and [*intended wife*], whose share or respective shares of and in the trust premises shall not then be payable or transferable, they the trustees or trustee for the time being of this settlement shall and do in the meantime, from and after the decease of the survivor of them the said [*intended husband*] and [*intended wife*], pay and apply the interest, dividends, and annual proceeds of the share (g) of every such child of and in the trust premises, under the trusts hereinbefore contained, or under any appointment or appointments to be made by virtue of the powers hereinbefore contained, or either of them, (subject nevertheless to any direction or declaration to the contrary in any such appointment or appointments), or so much of such interest, dividends, and annual produce as the said trustees or trustee shall in their or his discretion think proper, for or towards the support, maintenance, and education of such child or children, until such his or her share shall become payable or transferable, or he or she shall previously die: *Provided always*, that if in any one year the trustees or trustee for the time being shall, in pursuance of the aforesaid power, pay and apply any sum or sums of money for the maintenance and education of any such child or children, which shall be less than the interest, dividends, and annual produce to which he, she, or they shall or may be respectively entitled; Then and in such case, and so often as the same shall happen, the surplus shall accumulate and go in augmentation of, and be paid or transferred at the same time, and together with, the original share or shares of him, her, or them respectively, subject, nevertheless, to such benefit of survivorship or accruer as aforesaid; Yet, so nevertheless, that it shall be lawful for the trustees or trustee for the time being, to pay and

OF MORTGAGE  
DEBT, LEGACY,  
AND POLICY  
OF ASSURANCE.

Provision for  
maintenance.

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(g) The shares of the children being vested, are properly described as actual and not merely as presumptive shares.

OF MORTGAGE  
DEBT, LEGACY,  
AND POLICY  
OF ASSURANCE.

Provision for  
advancement.

apply the surplus and savings of the interest or dividends of the share or shares of every such child, in any one preceding year, for and towards and in increase of his or her maintenance and education in any succeeding year. *Provided also*, and it is hereby further agreed and declared, that it shall be lawful for the said trustees or trustee for the time being, with the consent in writing of the said [*intended husband*] and [*intended wife*], or the survivor of them, and, after the decease of such survivor, by and of the proper authority of the said trustees or trustee, at any time or times to sell or transfer any part of the share or respective shares for the time being, of such of the said children as shall be a son or sons (*h*), of and in the said trust monies, stocks, funds, and securities, not exceeding one-third part of his or their share or respective shares, and to apply the monies arising from such sale or sales in the placing or putting of such son or sons in or to any trade, profession, or employment, or otherwise for his or their benefit or advancement in the world, in such manner as the said trustees or trustee shall think proper, although the said share or respective shares of and in the said trust premises shall not then be absolutely vested or payable; But, in case there shall be no child of the said intended marriage, or in case there shall be any such child or children, and he, she, or they, being a son or sons, shall die under the age of twenty-one years, or being a daughter or daughters, shall die under that age without having been married, then, as to all and singular the trust premises, or so much thereof as shall not have been applied for the advancement of any of the said children, being a son or sons, as hereinbefore is mentioned; or shall not have been effectually disposed of under or by

If no child—

As to extending  
the power of  
advancement to  
daughters.

(*h*) In former precedents, the power of advancement has been extended to children of both sexes, and this in general seems to be advisable; for, even where the situation in life of the parties precludes the probability of the daughters being brought up to any trade or business, yet, it is often convenient to resort to such a power on the marriage of a daughter in the lifetime of the parents, or one of them; especially where the mother, being restrained from alienation during the coverture, is not competent to relinquish her prior life interest for the purpose of accelerating her daughters' portions. Sometimes, however, this is objected to, as being foreign to the intention of the provision.

virtue of either of the powers of appointment respectively hereinbefore contained (i); UPON TRUST, that the said [trustees], or the survivor of them, his executors or administrators, shall stand possessed thereof Upon the trusts following, that is to say, in case the said [intended husband] shall die in the lifetime of the said [intended wife], then *In trust* for the said [intended wife], her executors, administrators, or assigns, for her or their own absolute use and benefit; but, in case the said [intended wife] shall die in the lifetime of the said [intended husband], then *In trust* for such person or persons, and for such intents and purposes, and in such manner and form, as the said [intended wife], by any deed or deeds, instrument or instruments in writing, to be sealed and delivered by her in the presence of, and attested by two or more credible witnesses, or by her last will and testament in writing, or any writing in the nature of or purporting to be her last will and testament, or any codicil or codicils thereto, to be by her signed and published in the presence of, and attested by, three or more credible witnesses, shall from time to time, or at any time, whether covert or sole, direct or appoint; And in default of and until such direction or appointment, *In trust* for such person or persons as, under or by virtue of the statute for the distribution of intestates' effects, should or would, at the time of the decease of the said [intended wife], have been entitled to her personal estate, in case she had died intestate and without leaving a husband. AND THIS INDENTURE ALSO WITNESSETH, that, in consideration of the said intended marriage, the said [intended wife], with the consent and approbation of the said [intended husband] (testified by his being a party to and executing these presents), *Doth* by these presents bargain, sell, assign, transfer, and set over unto the said [trustees], their executors, administrators, and assigns, ALL THAT the said sum of 2500*l.* bequeathed to the said [intended wife] by the hereinbefore recited will of the said [intended wife's father] as

OF MORTGAGE  
DEBT, LEGACY,  
AND POLICY  
OF ASSURANCE.

In trust for the  
wife as she shall  
by deed or will  
appoint.

In default there-  
of,  
In a course of  
administration.

Further testa-  
ment.

Assignment by  
the intended  
wife of her le-  
gacy.

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(i) These words refer to the possible case of a deceased child having acquired an absolute interest under an appointment, though dying before majority or marriage.

OF MORTGAGE  
DEBT, LEGACY,  
AND POLICY  
OF ASSURANCE.

*Testatum.*

In trust for wife  
till marriage;

After marriage,  
upon trust for  
investment.

Trustees to  
stand possessed  
upon the same  
trusts as the  
mortgage debt  
before settled.

aforesaid, and the interest henceforth to become due and payable upon or in respect of the same; And all the right, title, interest, property, claim, and demand whatsoever of the said [*intended wife*], in, to, or out of the same, Together with all powers, remedies, and means whatsoever, requisite or necessary for suing for, recovering, receiving, and giving effectual releases and discharges for the said sum of 2500*l.* and interest, and every or any part thereof: To HAVE, RECEIVE, AND TAKE the said sum of 2500*l.*, interest, and premises expressed to be hereby assigned unto and by the said [*trustees*], their executors, administrators, and assigns, *In trust* for the said [*intended wife*], her executors, administrators, and assigns, until the said intended marriage shall be had and solemnized; and from and after the solemnization thereof, *Upon trust*, that they the said [*trustees*], or the survivor of them, his executors or administrators, shall and do, upon the receipt of the said sum of 2500*l.*, or any part thereof, lay out and invest the same with the consent in writing of the said [*intended husband*] and [*intended wife*], or of the survivor of them, or, if they shall be both dead, then by and of the proper authority of the said trustees or trustee for the time being, in some or one of the public stocks or funds of Great Britain and Ireland, or upon mortgage of freehold, copyhold, or leasehold estates, or other real securities in England, Wales, or Ireland, at interest, in the names or name of the said trustees or trustee, who is and are hereby empowered from time to time, with such consent or of such authority as aforesaid, to change and transpose the said securities as often as occasion shall require, or it shall be deemed expedient; *And also upon trust*, that the said [*trustees*], and the survivor of them, his executors or administrators, shall and do stand possessed of the said sum of 2500*l.*, and the stocks, funds, and securities in or upon which the same shall from time to time be invested, and the interest, dividends, and annual produce thereof, upon and for such and the same trusts, intents, and purposes, and under and subject to such powers, provisoes, declarations, and agreements, to take effect after the solemnization of the said intended marriage, as are hereinbefore expressed and declared of and concerning the said principal sum or mortgage debt of 2000*l.*, and the interest thereon, or such of them as shall be then subsisting unde-



terminated and capable of taking effect: PROVIDED ALWAYS, and it is hereby declared and agreed by and between the said parties hereto, that, notwithstanding the trusts hereinbefore contained, if the said [*intended wife*] shall survive the said [*intended husband*], her intended husband, and she shall be desirous of marrying again, Then and in such case, and so often as the same shall happen, it shall be lawful for the said [*intended wife*], upon or previous to any and every such future marriage, by any deed or deeds, or instrument or instruments in writing, to be sealed and delivered by her in the presence of, and to be attested by two or more credible witnesses, to direct and appoint the sum of 2000*l.*, part of the said trust monies, stocks, funds, or securities hereby settled, to be forthwith assigned and transferred unto such person or persons, upon such trusts, and for such intents and purposes, for the benefit of herself and any such future husband or husbands, and their issue, as she the said [*intended wife*] from time to time shall think proper; And they the said [*trustees*], and the survivor of them, his executors or administrators, are and is hereby empowered and directed to assign or transfer the same accordingly; And the receipt or receipts of the person or persons to whom the same principal sum, or the said stocks, funds, or securities shall be so directed to be assigned or transferred as aforesaid, shall be a good and effectual release and discharge to the said trustees or trustee for the same. *Provided nevertheless*, that, in case the said [*intended wife*] shall, after the decease of the said [*intended husband*], marry more than once, no greater or larger portion in the whole of the trust monies, stocks, funds, or securities comprised in these presents, shall be appointed and settled by virtue of this present power, than is equal in amount or value to one moiety or equal half part of all and singular the trust monies, stocks, funds, or securities hereby settled, computing the value of the several appointed or settled shares or portions thereof at the respective times of such appointments or settlements being made as aforesaid, and the value of the remaining or unappointed portion of the said trust monies, stocks, funds, or securities, at the time of the last of the said appointments or settlements. AND THIS INDENTURE ALSO WITNESSETH, that, in consider-

OF MORTGAGE  
DEBT, LEGACY,  
AND POLICY  
OF ASSURANCE.

Power to the  
wife to make a  
settlement on  
the husband and  
issue of any fu-  
ture marriage.

But the aggre-  
gate proportion  
so settled not to  
exceed a  
moiety.

Further testa-  
tum.  
Assignment by

OF MORTGAGE  
DEBT, LEGACY,  
AND POLICY  
OF ASSURANCE.

intended hus-  
band of policy of  
assurance.

ation of the said intended marriage, he the said [*intended husband*] *Doth* by these presents bargain, sell, assign, transfer, and set over unto the said [*trustees*], their executors, administrators, and assigns, ALL THAT the said instrument or policy of assurance, bearing date the — day of —, by which the life of the said [*intended husband*] is insured in the — Insurance Office in the sum of 1000*l.* as aforesaid, and also the said sum of 1000*l.* thereby secured, and all other sum and sums of money which shall or may become payable or be recoverable, and be received upon or by virtue of the said policy of assurance; And all benefit and advantage thereof; *And* all the right, title, interest, property, benefit, claim, and demand whatsoever, both at law and in equity, of him the said [*intended husband*], in, to, or out of the same; Together with full power for the said [*trustees*], or the survivor of them, his executors or administrators, in the names or name, and as the attornies or attorney of the executors or administrators of the said [*intended husband*], to use, exercise, and prosecute all powers, remedies, and means whatsoever, which shall be requisite or necessary for the suing for, recovering, and compelling payment of the said sum of 1000*l.*, and such other sum or sums of money as aforesaid, and for giving effectual releases and discharges for the same; and also from time to time to appoint a substitute or substitutes for the like purpose; To HAVE, RECEIVE, AND TAKE the said policy of assurance, sum and sums of money, and all other the premises expressed to be lastly hereby assigned unto the said [*trustees*], their executors, administrators, and assigns absolutely, *In trust* for the said [*intended husband*], his executors, administrators, and assigns, until the said intended marriage shall be had and solemnized, and from and after the solemnization thereof, *Upon trust*, that they the said [*trustees*], or the survivor of them, his executors or administrators, shall and do, after the decease of the said [*intended husband*], by all lawful ways and means, recover and receive of and from the said — Insurance Office, and all persons liable or intrusted to pay the same, the said sum of 1000*l.*, and all other sums of money which shall or may become due and payable upon or by virtue of the said policy of assurance, when and as the same shall respectively become due and payable; and also shall

*Habendum.*

Upon trust to  
invest the mo-  
ney when re-  
ceived—

and do upon receipt thereof, or any part thereof, lay out and invest the same with the consent of the said [*intended wife*], but if she shall not be then living, then of the proper authority and in the discretion of the said trustees or trustee for the time being, in some or one of the public stocks or funds of Great Britain, or upon mortgage of freehold, copyhold, or leasehold estates, or other real securities in England, Wales, or Ireland, in the names or name of the said trustees or trustee for the time being, who are and is hereby empowered from time to time, with such consent, or of such authority as aforesaid, to vary and transpose the said stocks, funds, and securities as often as occasion shall require, or it shall be deemed expedient so to do: And shall and do stand possessed of and interested in the said sum of 1000*l.*, and such other sum and sums as aforesaid, and the stocks, funds, and securities in or upon which the same respectively shall be laid out and invested, upon and for such trusts, intents, and purposes, and under and subject to such powers, provisoes, declarations, and agreements, to take effect after the solemnization of the said intended marriage, as are hereinbefore expressed and declared of and concerning the said principal sum or mortgage debt of 2000*l.* and interest, other than and except the trusts hereinbefore limited and declared to arise in the event of there being no child of the said intended marriage, or such of the same trusts, intents, and purposes, powers, provisoes, declarations, and agreements as shall be then subsisting undetermined and capable of taking effect; And in case there shall be no child of the said intended marriage, or, if any such, in case he, she, or they, being a son or sons, shall die under the age of twenty-one years, or, being a daughter or daughters, shall die under that age without having been married, then *Upon trust*, that they the said [*trustees*], or the survivor of them, his executors or administrators, shall and do stand possessed of the said policy of assurance, and the sum or sums of money thereby secured, or the stocks, funds, or securities, in or upon which the same shall happen to be invested, or so much thereof as shall not have been applied for the advancement of any of the children of the said intended marriage, being a son or sons as hereinbefore is mentioned, or shall not have been effectually disposed under either of the

OF MORTGAGE  
DEBT, LEGACY,  
AND POLICY  
OF ASSURANCE.

—and to be  
possessed there-  
of.

Upon foregoing  
trusts for the  
wife and chil-  
dren.

And in default  
of children—

OF MORTGAGE  
DEBT, LEGACY,  
AND POLICY  
OF ASSURANCE.

In trust for the  
husband.  
Husband cove-  
nants to pay  
premiums, and  
keep the policy  
on foot;

—for further  
assurance.

Trustees em-  
powered to pay  
the premiums  
on the hus-  
band's default.

powers of appointment respectively hereinbefore contained; *In trust* for the said [*intended husband*], his executors, administrators, or assigns, for his or their absolute use and benefit; and upon or for no other trust, intent, or purpose whatsoever. AND the said [*intended husband*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*trustees*], their executors, administrators, and assigns, That he the said [*intended husband*] shall and will at all times hereafter during his life, at his own costs and charges, from time to time, pay or cause to be paid the premiums or sums of money, and make, do, and execute, or cause to be made, done, and executed, all other acts, matters, and things, which shall be requisite and proper to be paid, made, done, and executed, for keeping the said policy of assurance on foot, and shall and will in all things conform to the rules, customs, and regulations of the said — Insurance Office, so far as relates to the said policy of assurance, to the intent that the same may be preserved in full force; *And also*, that he the said [*intended husband*], his executors and administrators, shall and will make, do, and execute, or cause and procure to be made, done, and executed, all such further and other reasonable acts, deeds, assignments, and assurances in the law whatsoever, for the better and more effectually assigning and transferring the said policy of assurance and premises hereby, or intended to be hereby, assigned by him unto the said [*trustees*], their executors, administrators, and assigns, and for enabling and empowering them to recover and receive the monies hereby, or intended to be hereby, assigned, as by the said [*trustees*], or the survivor of them, his executors or administrators, shall be lawfully and reasonably advised or devised and required: PROVIDED ALWAYS, and it is hereby agreed and declared, That, in case default shall be made by the said [*intended husband*], in payment of the premiums or sums of money which shall from time to time be requisite or proper to be paid, for keeping on foot the said policy of assurance as aforesaid, contrary to the covenant hereinbefore for that purpose contained on the part of the said [*intended husband*], It shall be lawful for the said trustees or trustee for the time being, so often as the same shall happen, with and out of the interest, dividends, and annual produce of the said principal sum or mortgage debt of 2000*l.*, and of the said



legacy or sum of 2500*l.*, or the stocks, funds, and securities whereon the same respectively shall happen to be invested, to pay or cause to be paid the said premiums or sums of money, and make, do, and execute, or cause to be made, done, and executed, all other acts, matters, and things, which shall be necessary to be paid, made, done, and executed, for keeping on foot the said policy, any thing herein contained to the contrary thereof in anywise notwithstanding. *Provided always*, and it is hereby declared, that, in case the said trustees or trustee, under the authority of this present provision, shall advance or apply in or towards payment of the said premiums of assurance, any sum or sums of money out of the interest, dividends, and annual produce of the said trust premises, which, by virtue of the trusts aforesaid, belong and are payable to the said [*intended wife*], the monies so advanced or applied shall or may be repaid to the said [*intended wife*], her executors, administrators, or assigns, (unless the contrary shall be directed in writing by her), out of any sum or sums which by virtue of the said trusts shall happen then or at any time thereafter to belong or be payable to the said [*intended husband*], his executors, administrators, or assigns, with interest thereon at the rate of 4*l. per cent. per annum*, and shall be retained and repaid by the said trustees or trustee out of such monies accordingly. *Provided also*, and it is hereby further agreed and declared, that it shall be lawful for the trustees or trustee for the time being of this settlement, at any time or times after the solemnization of the said intended marriage, by and with the consent and direction in writing of the said [*intended husband*] and [*intended wife*], or of the survivor of them, to sell, call in, or dispose of the stocks, funds, and securities which shall be vested in the said trustees or trustee for the time being, by virtue of the trusts hereinbefore contained, or any part thereof; and, by and with such consent and direction as lastly mentioned, to lay out and invest the monies to arise by any such sale, calling in, or disposition, in the purchase of any freehold messuages, lands, tenements, or hereditaments in possession, to be situate in England or Wales, of a clear and indefeazible estate of inheritance in fee-simple, or of any messuages, lands, or tenements of inheritance of copyhold tenure, or held under a renewable lease or leases for lives or for years, or held for a long term or

OF MORTGAGE  
DEBT, LEGACY,  
AND POLICY  
OF ASSURANCE.

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Wife to be reimbursed premiums of assurance paid out of her income.

Power to invest trust monies in the purchase of lands.

OF MORTGAGE  
DEBT, LEGACY,  
AND POLICY  
OF ASSURANCE.

terms of years (*h*); and that the messuages, lands, tenements, or hereditaments to be so purchased, shall be conveyed and assured unto and to the use of the said trustees or trustee, their or his heirs, executors, administrators, and assigns, respectively, according to the nature and quality thereof respectively, and shall be held by them or him, *Upon trust*, at any time or times, with the consent and by the direction in writing of the said [*intended husband*] and [*intended wife*], or the survivor of them, and, after the decease of such survivor, then in the discretion and of the absolute authority of the said trustees or trustee (*j*), to make sale and absolutely dispose of the same messuages, lands, tenements, and hereditaments, either together or in parcels, and either by public auction or private contract, at such price or prices as can be reasonably gotten for the same (with liberty to purchase in the same at any auction or auctions), and to convey the same when sold to the purchaser or purchasers thereof, or as he, she, or they shall direct, and to receive the purchase money for the same; And, with such consent, and in such discretion as aforesaid, to lay out the money so to be received in or upon the public stocks or funds of Great Britain, or upon any mortgage of freehold, copyhold, or leasehold estates, or upon any other real securities in England, Wales, or Ireland; And it is hereby further declared, that the said trustees or trustee for the time being respectively, shall hold as well the said messuages, lands, tenements, and hereditaments, and the rents, issues, and profits thereof, in the meantime until the sale thereof, as the money to arise from the sale thereof, or the stocks, funds, or securities wherein the same shall be invested, and the yearly interest, dividends, and produce thereof, upon and for such of the several trusts, intents, and purposes, and under and subject to such of the several provisions, declarations, and agreements, (including this present provision and declaration), hereinbefore expressed and contained concerning the said trust mo-

Purchased lands  
to be held upon  
the trusts before  
declared.

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(*h*) Or, "held for a term or terms whereof sixty-five years at the least shall be unexpired."

(*j*) It will be observed, that the original investment in land is not to be made by the trustees except with consent; but, the re-conversion into personalty, after the decease of the husband and wife, is imperative and absolute.

OF MORTGAGE  
DEBT, LEGACY,  
AND POLICY  
OF ASSURANCE.

nies, with which the said messuages, lands, tenements, or hereditaments shall have been so purchased, and the yearly interest, dividends, and produce thereof, as shall be then subsisting and capable of taking effect; And it is hereby further declared, that the messuages, lands, tenements, and hereditaments to be so purchased as aforesaid, shall, from and immediately after such purchase shall be made, be considered for all the purposes of this settlement as personal estate, though no actual conversion thereof into money shall have taken place; *Provided also*, and it is hereby further declared and agreed, that, in case any messuages, lands, tenements, or hereditaments to be purchased as aforesaid, shall be held by a renewable lease or leases for lives or for years, the fines, fees, and expenses of any renewal of the same shall be defrayed out of the rents, issues, and profits of the premises whereof such renewal shall be made; *Provided also*, that it shall be lawful for the trustees or trustee for the time being of this settlement, with such consent or in such discretion as aforesaid, to grant any leases of any messuages, lands, tenements, and hereditaments to be so purchased as aforesaid, for any term not exceeding twenty-one years in possession, at the most improved rents, without taking any fine, premium, or foregift (*k*). PROVIDED ALSO,

Authority to  
lease.

(*k*) A power to invest in land is not inserted in money settlements, as a matter of course, like the common powers to vary securities and change trustees. It would be well, however, if they were more generally introduced, as the want of such a power sometimes precludes the opportunity of an advantageous investment, or exposes trustees, who are bold enough to purchase without authority, to the risk of being obliged to take the purchase on themselves, if it should turn out unfavourably. Sometimes, indeed, the husband makes the purchase, and mortgages to the trustees, who advance the purchase-money. To obviate the objection commonly urged, that the power greatly increases the length of the deed, a very short form is here given—

Remark on the  
power to invest  
in land.

“ PROVIDED ALWAYS, and it is hereby declared, that it shall be lawful for the said trustees or trustee for the time being, with the consent in writing of the said [*intended husband*] and [*intended wife*], or the survivor of them, to invest the whole or any part of the said trust monies in one or more purchases of freehold or copyhold estates of inheritance, or of leasehold estates held for long terms of years, which here-

Shorter form of  
power to purchase.

OF MORTGAGE  
DEBT, LEGACY,  
AND POLICY  
OF ASSURANCE.

Power to the  
trustees to lend  
money to the  
husband.

and it is hereby further agreed and declared, that it shall be lawful for the trustees or trustee for the time being of this settlement, at the request and by the direction of the said [*intended wife*], with and out of the said trust monies, stocks, funds, and securities vested in them by virtue of the trusts herein contained, to lend and advance to the said [*intended husband*] any sum or sums of money not exceeding in the whole the sum of 1000*l.*, at such rate of interest as the said trustees or trustee shall deem reasonable, without requiring any further or other security for the said principal and interest monies, than the bond or covenant of the said [*intended husband*]; *And further*, that it shall be lawful for the said trustees or trustee (subject nevertheless to the direction in writing of the said [*intended wife*],) to continue

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ditaments so to be purchased shall be conveyed to the said trustees or trustee, Upon trust, at any time thereafter, with the consent in writing of the said [*intended husband*] and [*intended wife*], or the survivor of them, and after the decease of such survivor, then of the proper authority of such trustees or trustee, to sell the said hereditaments, either by public auction or private contract, (with power to purchase in the same at any auction), and convey and assure the same when sold as the purchaser or purchasers shall direct; And the said trustees or trustee shall stand possessed of the monies to arise from such sale or sales, upon the same trusts as are hereby declared concerning the monies with which the said hereditaments so sold shall have been purchased, but the person or persons paying the said purchase-monies shall not be bound to see to the application thereof; And that, until the sale of the said hereditaments, the same shall for all the purposes of this settlement be considered as personal estate, and the rents and profits thereof shall be received by, and applied for the benefit of, the person or persons who would be entitled to the interest, dividends, and annual produce of the said trust monies in case no such purchase had been made; *And further*, that it shall be lawful for the said trustees and trustee to demise the said hereditaments so to be purchased at any time before the sale thereof, for any term not exceeding twenty-one years in possession, at rack rent."



such loan to the said [*intended husband*], as well after the decease as in the lifetime of the said [*intended wife*], for such period as the said trustees or trustee in their or his discretion shall think proper, any thing hereinbefore contained, or any rule of law or equity to the contrary notwithstanding. PROVIDED ALSO, and it is hereby further agreed and declared, That the person or persons who from time to time shall or may have all or any part of the trust monies and premises, in his, her, or their hand or hands, either upon securities given by him, her, or them, or as a purchaser or purchasers under the power of sale hereinbefore contained, or otherwise howsoever, shall not be obliged or required to see to the application or disposition of the same, or any part thereof, or the interest, dividends, and annual income thereof, or of any part thereof, after payment of the same to the person or persons who for the time being shall be the acting trustee or trustees of this settlement, or be answerable or accountable for the misapplication or non-application of the same money, or any part thereof, by him or them; And that all and every receipt and receipts which shall be given for the said trust monies, or any part thereof, or the interest, dividends, and income of the same, or any part thereof, by the person or persons who for the time being shall be the acting trustee or trustees under the settlement, shall be a good, effectual, and sufficient acquittance and discharge, or several good, effectual, and sufficient acquittances and discharges for all and every sum and sums of money which therein and thereby respectively shall be acknowledged or expressed to be or to have been received (l). (*Add power to appoint new trustees, and indemnities to trustees*, ut ante, p. 131). AND WHEREAS, upon the treaty for the said intended marriage, it was also agreed between the said parties hereto, That, in case the said intended marriage should take effect, and the said [*intended wife*] should survive the said [*intended husband*], the annual sum of 100*l.* should be secured to be paid to the said [*intended wife*] during her life, in lieu and bar of her dower.

OF MORTGAGE  
DEBT, LEGACY,  
AND POLICY  
OF ASSURANCE.

Exoneration to  
persons paying  
trust monies to  
trustees.

Power to ap-  
point new trus-  
tees.  
Agreement for  
jointure annu-  
ity.

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(l) *Vide* a shorter form of an indemnifying clause of this nature, ante, pp. 131, 142.

OF MORTGAGE  
DEBT, LEGACY,  
AND POLICY  
OF ASSURANCE.

Further *testa-*  
*tum*.

Covenant by  
husband to pay  
annuity to the  
wife surviving,  
and, on the de-  
cease of his fa-  
ther, to secure it  
on real estate.

er and thirds, in manner hereinafter mentioned. NOW THIS INDENTURE FURTHER WITNESSETH, that, in pursuance of the said lastly recited agreement, and in consideration of the said intended marriage, the said [*intended husband*] doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*trustees*], their executors, administrators, and assigns, that, in case the said intended marriage shall take effect, and the said [*intended wife*] shall survive the said [*intended husband*], the heirs, executors, or administrators of the said [*intended husband*] shall and will yearly and every year, during the then residue of the natural life of the said [*intended wife*], pay or cause to be paid unto the said [*intended wife*], or her assigns, one annuity or yearly sum of 100*l.*, free and clear of all taxes and other deductions whatsoever, by half yearly payments, on the — day of —, and the — day of —, in even and equal portions, in every year, the first payment thereof to be made on such of the said days of payment as shall first happen next after the decease of the said [*intended husband*]; such annuity or yearly sum of 100*l.* to be for the jointure of the said [*intended wife*], and in lieu, bar, and satisfaction of and for her whole dower or thirds at common law, or by or on account of custom, free bench, or widow's part, which she can or may or otherwise might have or claim of, in, or out of all and every or any of the freehold, copyhold, or customary manors, mesuages, lands, tenements, and hereditaments, whereof or whereunto the said [*intended husband*] now is, or at any time or times during the said intended coverture shall be, seised or entitled for any estate of inheritance, or any other estate to which dower or free bench is incident; And also, that he the said [*intended husband*], or his heirs, and all other necessary and proper parties, shall and will, at his or their own costs and charges, within one year next ensuing the decease of [*husband's father*], father of the said [*intended husband*], well and effectually subject and charge all and every, or a sufficient part or parts of the said mesuages, lands, tenements, hereditaments, and real estate, of or to which the said [*intended husband*] shall, upon the decease of his said father, become seised or entitled at law or in equity, to or with the payment of the said annuity or year-

ly sum of 100*l.*, with the usual powers of enforcing payment of the said annuity or yearly sum of 100*l.*, in case the same shall be in arrear, by entry and distress, and perception of rents and profits. IN WITNESS, &c.

OF MORTGAGE  
DEBT, LEGACY,  
AND POLICY  
OF ASSURANCE.

ASSIGNMENT of the STOCK in TRADE, CREDITS, and HOUSEHOLD FURNITURE of a FEMALE TRADER about to marry; with Provisions for enabling her to CARRY on her TRADE for her SEPARATE BENEFIT, and, after her Death, (subject to her absolute Appointment), for her CHILDREN by a former Husband, and the Children of the intended Marriage. LETTER of ATTORNEY and COVENANTS by the HUSBAND, and INDEMNITY to him.

MARRIED  
WOMAN CARRY-  
ING ON TRADE.

**THIS INDENTURE**, made the — day of —, BETWEEN [*intended wife*], of &c., dress-maker and milliner, of the first part; [*intended husband*], of &c., linen-draper, of the second part; and [*trustees*], of &c., of the third part. WHEREAS, (*recite intended marriage*). AND WHEREAS the said [*intended wife*] is possessed of or entitled to a considerable personal estate, consisting of book debts, stock, and effects, in her trade of a dress-maker and milliner, and also the household goods and furniture mentioned and specified in the schedule hereunder written; And upon the treaty for and in consideration of the said intended marriage it was agreed, that, in case the same should take effect, the said [*intended wife*] should continue to carry on her said trade of dress-maker or milliner, without the control or intermeddling of the said [*intended husband*], in such manner, and as fully and effectually, to all intents and purposes, as if she were a feme sole; And that all and singular the personal estate of or to which she the said [*intended wife*] now is, or of or to which she or her said intended husband in her right shall, at any time or times during the said intended coverture, become possessed or entitled, should be transferred to and vested in trustees, upon and for the trusts, intents, and

Parties.

Recital of intended marriage.

—That the intended wife was possessed of considerable personal estate.

—Agreement that intended wife should carry on her business,

without the control of intended husband.

Personal estate of intended wife to be transferred to trustees.

MARRIED  
WOMAN CARRY-  
ING ON TRADE.

*Testatum.*

Intended wife,  
with the privity  
of the intended  
husband, assigns  
to trustees

All her credits  
and personal es-  
tate.

Trust for the  
wife until mar-  
riage.

After marriage

—as the wife  
shall appoint.

purposes hereinafter declared concerning the same; and that the said [*intended husband*] should enter into such covenants as are hereinafter mentioned. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said recited agreement, and in consideration of the said intended marriage between the said [*intended husband*] and [*intended wife*], she the said [*intended wife*], with the privity, consent, and approbation of the said [*intended husband*], (testified by his executing these presents), *Doth* by these presents bargain, sell, assign, transfer, and set over unto the said [*trustees*], their executors, administrators, and assigns, ALL AND EVERY the sum and sums of money now due or owing to her the said [*intended wife*] from any person or persons whomsoever, and all and singular the goods, articles, stock, and effects in trade, of or belonging to her the said [*intended wife*]; and also, all and singular the household furniture, articles, and things mentioned and specified in the schedule hereunder written; and all and singular other the goods, chattels, credits, monies, and personal estate whatsoever, which she the said [*intended wife*] now is possessed of or entitled to at law or in equity; And all the right, title, property, claim, and demand whatsoever of her the said [*intended wife*], of, in, to, and out of the same premises respectively; Together with all powers, remedies, and means whatsoever, requisite or necessary for the suing for, recovering, and giving effectual discharges for the sums of money and premises expressed to be hereby assigned, or any of them, or any part thereof respectively; TO HAVE, RECEIVE, AND TAKE all and singular the premises hereby assigned or expressed and intended so to be, unto the said [*trustees*], their executors, administrators, and assigns, *In trust* for the said [*intended wife*], her executors, administrators, and assigns, until the said intended marriage shall be had and solemnized; and, after the solemnization thereof, Upon and for the trusts, intents, and purposes hereinafter declared concerning the same, (that is to say), *In trust* for such person or persons, for such intents and purposes, and subject to such powers, provisoes, and agreements, or without being so subject, and in such manner and form, as the said [*intended wife*], by any writing under her hand, or by her last will and testament in writing, or any writing in the nature of or purporting to be her last will and testament, or any codicil or codicils there-



to, shall from time to time, or at any time or times, notwithstanding the said intended coverture; and whether she shall be covert or sole, direct, limit, or appoint, give, or bequeath the same; and in default of and until such direction, limitation, or appointment, gift, or bequest, and as to so much and so many and such part and parts of the premises of which there shall be no such direction, limitation, or appointment, gift, or bequest, or to which the same shall not extend, Then upon and for the trusts, intents, and purposes following; (that is to say), *Upon trust* for the said [*intended wife*], during her life, for her sole and separate use and benefit, independently of the said [*intended husband*], and not to be subject to his debts, control, or engagements; and for that purpose to permit and suffer the said [*intended wife*], by herself, and without the intermeddling of the said [*intended husband*], to carry on the said trade or business of a dress-maker and milliner, and to manage, sell, order, and dispose of the stock and effects of or belonging to her in the said trade, and to receive, apply, and dispose of the credits and sums of money, gains, and profits, which shall from time to time be due, owing, or belonging to her, in respect of, or which shall arise from, such trade or business; and also to permit her to receive and take the interest, dividends, and annual produce of such of the trust premises as produce interest, dividends, or annual produce, and otherwise to permit her to have, hold, order, manage, let, and dispose of all or any of the said trust premises during her life, in such manner, and as fully and effectually to all intents and purposes, as if the said [*intended wife*] were a feme sole; And from and after the decease of the said [*intended wife*], in case no such direction, limitation, or appointment, gift, or bequest shall be made by the said [*intended wife*] as aforesaid, or as to so much and so many and such part and parts of the trust premises, of which there shall be no such direction, limitation, or appointment, gift, bequest, or disposition as aforesaid, or to which the same shall not extend, *In trust* for [A.] and [B.], the two daughters of the said [*intended wife*] by [*deceased husband*], her deceased husband, in case they respectively shall attain the age of twenty-one years, or marry, and also for all and every the child and children of the body of the said [*intended wife*] by the said [*intended husband*] to

MARRIED  
WOMAN CARRY-  
ING ON TRADE.

In default of  
appointment,

In trust for the  
intended wife  
for life.

After her de-  
cease.

In trust for the  
children of her  
former and the  
intended mar-  
riage.

MARRIED  
WOMAN CARRY-  
ING ON TRADE.

And in default  
of such children,

In trust for the  
husband.  
Provision for  
maintenance.

be begotten, who, being a son or sons, shall live to attain the age of twenty-one years, or shall die under that age, leaving issue surviving him or them respectively (*a*), or, being a daughter or daughters, shall live to attain the said age, or be married, which shall first happen, equally to be divided between them, share and share alike, and their respective executors, administrators, and assigns; and in case there shall be only one such child of the said [*intended wife*], either by her deceased or intended husband as aforesaid, who, being a son, shall attain the age of twenty-one years, or shall die under the said age leaving lawful issue, or, being a daughter, shall attain the said age or be married, *In trust* for such one child, his or her executors, administrators, or assigns; But, in case there shall be no child of the said [*intended wife*] by her deceased or intended husband as aforesaid, who, being a son, shall live to attain the age of twenty-one years, or shall die under that age leaving issue, or who, being a daughter, shall attain the said age of twenty-one years, or be married, which shall first happen, *In trust* for the said [*intended husband*], his executors, administrators, and assigns; and *Upon further trust* that they the said [*trustees*], and the survivor of them, his executors or administrators, shall and do, from and immediately after the decease of the said [*intended wife*], pay and apply the income, or the interest, dividends, and annual produce of the expectant or presumptive share of each such child of the said [*intended wife*] of and in the trust premises, for and towards his or her support, maintenance,

As to the vesting of sons' shares.

(*a*) The mode generally adopted in framing trusts for children, of suspending the vesting of the sons' shares until majority, admits of the possibility of a son marrying, and, on his decease, leaving not only a wife but children, without having become an object of the trust. This is obviated by the present plan of making the shares vest at majority, and also *on death under twenty-one, leaving issue*. With a view, however, to the possible event of there being a surviving widow, though no issue, it seems better to make the shares of sons (like those of daughters) vest absolutely on marriage, rejecting the distinction which is ordinarily made between the two classes of children. Of course the point is of less importance where the parent has an absolute power of appointment, as in this case, or a power of appointing among issue of every degree, (*ut ante*, p. 137), since then the donee has the opportunity of adapting the appointment to the actual circumstances of the family.

and education, until such his or her respective share shall become vested, or he or she shall previously die. AND each of them the said [*intended husband*] and [*intended wife*] Doth by these presents constitute and appoint the said [*trustees*], and the survivor of them, his executors or administrators, to be the true and lawful attornies and attorney of them the said [*intended husband*] and [*intended wife*] respectively, for them and in their respective names, or in the name of one of them, at any time after the solemnization of the said intended marriage, to commence and prosecute any actions or action at law, or other proceedings, for the recovery of any of the credits or sums of money hereby assigned, and also of all and every or any of the credits or sums of money which shall or may hereafter be contracted with or become owing to the said [*intended wife*], in the course of the conduct or management of her said trade or business, so to be continued by her as aforesaid, and upon the receipt of any of the said monies, to give proper acquittances and discharges for the same; but so, nevertheless, that the same shall be received by the said attornies or attorney upon the trusts hereinafter declared concerning the same: With power to appoint a substitute or substitutes for all or any of the purposes aforesaid, and such substitution at pleasure to revoke. AND the said [*intended husband*] doth hereby, for himself, his heirs, executors, and administrators, covenant with the said [*trustees*], their executors and administrators, that, in case the said intended marriage shall take effect, all and singular the premises hereinbefore expressed to be hereby assigned, shall thenceforth, from time to time, and at all times, remain, continue, and be upon, for, and subject to the trusts, intents, and purposes hereinbefore declared concerning the same; And that it shall be lawful for the said [*intended wife*] to carry on, order, manage, and conduct the said trade or business, and the stock and effects, and receive the gains and profits thereof, without any let, suit, trouble, intermeddling, interruption, or disturbance of, from, or by the said [*intended husband*], his executors or administrators, or any person or persons claiming or to claim by, from, through, or under him or them; And also, that he the said [*intended husband*] shall and will permit and suffer the said [*intended wife*] from time to time, and at all times during the said intended coverture, if she shall think proper, to carry on the said trade

MARRIED  
WOMAN CARRY-  
ING ON TRADE.  
Letter of attor-  
ney by husband.

Husband cove-  
nants for quiet  
enjoyment.

That wife may  
occupy the  
house.

MARRIED  
WOMAN CARRY-  
ING ON TRADE.

Not to revoke  
power.

And for further  
assurance, as  
well of the pre-  
sent as of the  
after-acquired  
personalty of  
the wife.

Husband to be

or business in or upon the messuage or tenement being No. — in — street, in — aforesaid, now occupied by the said [*intended husband*], or in such other messuage or dwelling-house as he may for the time being use as a place of residence, without any let, suit, trouble, interruption, or disturbance of, from, or by the said [*intended husband*], or any person or persons claiming or to claim by, from, through, or under him, and without demanding or requiring any rent or compensation for the use thereof: *And moreover*, that he the said [*intended husband*], his executors or administrators, shall not nor will, at any time hereafter, revoke the letter of attorney hereinbefore contained, or in any manner interfere with or hinder the due and effectual exercise thereof: *And further*, that he the said [*intended husband*], his executors or administrators, shall and will, from time to time and at all times hereafter, at the request of the said [*trustees*], or the survivor of them, or his executors or administrators, but at the costs and charges of the said [*intended wife*], her trustees, executors, or administrators, make, do, and execute, or cause and procure to be made, done, and executed, all such further and other acts, deeds, matters, and things, assignments, and assurances whatsoever, which shall be requisite or necessary for enabling the said [*trustees*], or the survivor of them, his executors or administrators, to receive and compel payment of all or any of the credits and sums of money hereinbefore expressed to be hereby assigned, and which shall be requisite or necessary for the transferring and assigning as well the personal estate which the said [*intended wife*] is now possessed of or entitled to at law or in equity, (except as aforesaid), as also the personal estate which she the said [*intended wife*], or the said [*intended husband*] in her right, or any person or persons in trust for her, shall at any time or times during the said intended coverture become or be possessed of or entitled to or shall otherwise acquire, by gift, bequest, purchase, accumulation, or otherwise howsoever, unto the said [*trustees*], or the survivor of them, or his executors or administrators; Upon and for the trusts, intents, and purposes hereinbefore declared; as by the said [*trustees*], or the survivor of them, his executors or administrators, or their or his counsel in the law, shall be lawfully and reasonably advised or devised and required. **Pro-**



VIDED

ALWAYS, and it is hereby agreed and declared between and by all the said parties to these presents, that the said separate estate and effects of the said [*intended wife*], so as aforesaid assigned and agreed to be for her separate use as aforesaid, shall in the first place be liable and subject to indemnify and save harmless the said [*intended husband*], his executors or administrators, and his and their lands and tenements, goods and chattels, of, from, and against all and singular the debts and sums of money due and owing, or at any time during the said intended coverture to become due and owing from her the said [*intended wife*], and also, of, from, and against all actions, suits, costs, charges, damages, and expenses whatsoever, which shall or may be commenced or brought against him the said [*intended husband*], his executors or administrators, or which he or they or any of them shall or may, at any time or times hereafter, sustain, pay, bear, expend, or be put unto, by reason or in consequence of any such debt or debts, or by reason or in consequence of the authority hereinbefore given to the said [*trustees*] and the survivor of them, his executors or administrators, to sue in the names of the said [*intended husband*] and [*intended wife*], or in the name of the said [*intended husband*] alone, or by reason or on account of any matter or thing in anywise relating thereto. (*Trustees' receipts to be good discharges—Power to appoint new trustees—Indemnity to trustees, and authority to deduct expenses, as in former precedents*). IN WITNESS, &c.

MARRIED  
WOMAN CARRY-  
ING ON TRADE.  
indemnified out  
of the trust pre-  
mises.

THE SCHEDULE referred to in the preceding indenture.

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POST OBIT  
BOND.

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BOND (a) *by the Intended Wife's FATHER, to TRUSTEES, to secure part of his Daughter's Portion, payable on his Decease, and Interest Half-yearly, in the meantime, upon Trusts to be declared by a Settlement of even Date, (next Precedent). (Variation where the principal Sum is payable in twelve Months after the Marriage).*

## Obligation

KNOW ALL MEN BY THESE PRESENTS, That I, [*obligor*], of &c., am held and firmly bound unto [*trustees*], of &c., in the sum of 3000*l.*, to be paid to the said [*trustees*] or their certain attorney, executors, administrators, or assigns; For which payment to be well and truly made, I bind myself, my heirs, executors, and administrators, and every of them firmly by these presents; Sealed with my seal:  
DATED the — day of —.

## Recitals.

WHEREAS a marriage is intended to be shortly had and solemnized between [*intended husband*], of &c., and [*intended wife*], of &c., spinster, an infant under the age of twenty-one years, the eldest daughter of the said [*obligor*]. AND WHEREAS, upon the treaty for the said intended marriage, it was agreed (among other things) that the said [*obligor*] should, by his bond or obligation in writing, secure the sum of 1500*l.*, to be paid to the above-named [*trustees*], their executors, administrators, or assigns, within (b) three calendar months next after the decease of him the said [*obligor*], with interest for the same in the meantime, Upon such trusts, and for such intents and purposes, and with, under, and sub-

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## Variation.

(a) *Vide* some remarks on this precedent, *post*, 180.

(b) “twelve calendar months after the solemnization of the said intended marriage, with interest,” &c.

POST OBIT  
BOND.

ject to such powers, provisoes, agreements, and declarations, as are or are intended to be expressed and declared of or concerning the same, in and by an indenture (c) already prepared and engrossed, and bearing or intended to bear even date with the above-written obligation, and made, or intended to be made, between the said [*intended husband*] of the first part; the said [*intended wife*], of the second part, the said [*father*], of the third part, and the said [*trustees*], of the fourth part; And in pursuance of the said agreement, the said [*obligor*] hath executed the above-written obligation.

NOW THE CONDITION of the above-written obligation is such, that, if the said intended marriage shall take effect and be solemnized (d), and the heirs, executors, or administrators of the said [*obligor*] do and shall, within three calendar months next after the decease of him the said [*obligor*], well and truly pay or cause to be paid to the said [*trustees*], their executors, administrators, or assigns, the full and just sum of 1500*l.*; And the said [*obligor*], his heirs, executors, or administrators, do and shall, in the meantime, from the time of the solemnization of the said intended marriage until the day of payment of the said sum of 1500*l.*, well and truly pay or cause to be paid unto the said [*trustees*], their executors, administrators, or assigns, interest for the said sum of 1500*l.*, after the rate of 5*l. per cent. per annum*, in equal half-yearly portions, the first half-yearly payment thereof to be made at the expiration of six calendar months next after the solemnization of the said intended marriage (e); And in case the said sum of 1500*l.* shall be paid on any other day than one of the said half-yearly days of payment, then a proportional sum for the time which shall have elapsed of the then current half year, such proportional interest to be paid at the time of paying the principal; Or,

(c) Next precedent.

(d) “ and the said [*obligor*], his heirs, executors, or administrators, do and shall, within twelve calendar months after the solemnization thereof, well and truly pay,” &c.

Variations where the principal is payable twelve months after the marriage.

(e) “ then and in either of the said cases, the above-written obligation,” &c.

POST OBIT  
BOND.

if the said intended marriage shall not take effect, Then and in either of the said cases, the above-written obligation to be void, otherwise to be and remain in full force and virtue.

OF PORTION  
SECURED BY  
BOND AND BILL  
OF EXCHANGE.

SETTLEMENT *previously to Marriage of a Portion secured by the Lady's Father partly by his BOND (last Precedent (a)), and partly by indorsing a BILL of EXCHANGE. The Trusts are for the Benefit of the Lady and her CHILDREN by her intended and any future Husband. Power to the Wife to bequeath a Life Interest to the Husband. (Variation where a COVENANT in the Settlement is SUBSTITUTED for the SEPARATE BOND). (A short and convenient Form).*

Parties.

**THIS** INDENTURE, made the — day of —, BETWEEN [*intended husband*], of &c., of the first part; [*intended wife*], of &c., spinster, eldest daughter of [*father*], of —, (an infant under the age of twenty-one years), of the second part; the said [*father*], of the third part; and [*trustees*], of &c., of the fourth part: WHEREAS a marriage is intended to be soon solemnized between the said [*intend-*

Recital of in-  
tended mar-  
riage;

Suggestion as to  
substituting a  
covenant for the  
bond.

(a) A less operose and expensive, but equally efficient mode of securing this part of the portion, would be to introduce into the settlement a covenant by the lady's father for the payment of it. By this means the entire expense of the bond might be saved, because the insertion of a covenant in the settlement does not increase the stamp, covenants not being liable to *ad valorem* duty. A bond possesses no other advantage, in point of security, over a covenant, than that it enables the obligees to obtain judgment for the penalty, after forfeiture by the non-payment of any part of the interest or principal, which judgment would create a lien on the lands of the debtor. The only convenience arising from either the bond or covenant being contained in a separate instrument is, that it may be delivered up to the obligor or covenantor to be cancelled when paid off; but this is of little moment, because an indorsed receipt for the money would fully answer the purpose of evidencing the payment. The variations in the notes are adapted to the suggested alteration.



*ed husband*] and the said [*intended wife*]. AND WHEREAS, upon the treaty for the said intended marriage, it was agreed that the said [*father*] should settle upon the trusts herein-after declared, as and for the marriage portion of his daughter the said [*intended wife*], the sum of 2000*l.*, to be secured in manner following, that is to say, the sum of 500*l.*, part thereof, by the indorsement of a certain bill of exchange dated the — day of —, drawn by the said [*father*] upon and accepted by [A. B. & Co.], for the said sum of 500*l.*, payable to the order of the said [*father*] six months after the date thereof, and the sum of 1500*l.*, the remaining part of the said portion of 2000*l.*, by the bond (b) of the said [*father*], payable at or soon after his decease, with interest at the rate of 5*l.* *per cent. per annum* in the meantime half yearly: AND WHEREAS, in pursuance of the said agreement, the said [*father*], previously to the execution of these presents, hath indorsed and delivered to the said [*trustees*] the said bill of exchange for the sum of 500*l.*, as they the said [*trustees*] do hereby acknowledge and declare (c). (d) AND WHEREAS, in further pursuance of

OF PORTION  
SECURED BY  
BOND AND BILL  
OF EXCHANGE.

—Agreement  
or settlement.

—Of indorse-  
ment of bill  
of exchange.

—Of bond.

(b) “covenant.”

(c) As the bill passes by indorsement, of course no assignment of the debt in the present deed is requisite.

Variation where  
a covenant is  
substituted for  
the bond.

(d) If a covenant is to be added (as suggested *ante*, p. 180), omit the next recital in the text, and for it and the succeeding *testatum* clause substitute the following:—

“NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said recited agreement, and in consideration of the said intended marriage, the said [*father*] for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*trustees*], their executors or administrators, that in case the said intended marriage shall take effect and be solemnized, the heirs, executors, or administrators of the said [*father*], shall and will within three calendar months next after the decease of him the said [*father*], well and truly pay, or cause to be paid to the said [*trustees*], their executors, administrators, or assigns, the full and just sum of 1500*l.*; And also, that the said [*father*], his heirs, executors, or administrators, shall and will in the meantime from the time of the solemnization of

Covenant by  
the father for  
the payment of  
the portion.

OF PORTION  
SECURED BY  
BOND AND BILL  
OF EXCHANGE.

the said agreement, the said [*father*] hath executed his bond or obligation, bearing even date with these presents, unto the said [*trustees*] in the penal sum of 3000*l.*, with a condition making void the same in case the said intended marriage shall take effect and be solemnized, and the heirs, executors, or administrators of the said [*father*] do and shall within three calendar months next after the decease of him the said [*father*], pay to the said [*trustees*], their executors, administrators, or assigns, the sum of 1500*l.*, and the said [*father*], his heirs, executors, or administrators, do and shall in the meantime, from the time of the solemnization of the said intended marriage until the day of payment of the said sum of 1500*l.*, pay unto the said [*trustees*], their executors, administrators, or assigns, interest for the said sum of 1500*l.*, after the rate of 5*l. per cent. per annum*, in equal half-yearly portions, the first half-yearly payment thereof to be made at the expiration of six calendar months next after the solemnization of the said intended marriage; And in case the said sum of 1500*l.* shall be paid on any other day

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the said intended marriage, until the day of payment of the said sum of 1500*l.*, well and truly pay, or cause to be paid, unto the said [*trustees*], their executors, administrators, or assigns, interest for the said sum of 1500*l.* after the rate of 5*l. per cent. per annum*, in equal half-yearly portions, the first half-yearly payment thereof to be made at the expiration of six calendar months next after the solemnization of the said intended marriage; And in case the said sum of 1500*l.* shall be paid on any other day than one of the half-yearly days of payment aforesaid, then a proportional sum for the time which shall have elapsed of the then current half year, such proportional interest to be paid at the time of paying the principal. AND THIS INDENTURE FURTHER WITNESSETH, that, in consideration of the premises, it is hereby further declared and agreed by and between the said parties to these presents, that the said [*trustees*], and the survivor of them, and his executors or administrators, shall and do stand possessed of the said bill of exchange and covenant, and the principal and interest monies thereby respectively secured, upon the trusts following, that is to say," (*proceed ut supra in the text*).

than one of the half-yearly days of payment, then a proportional sum for the time which shall have elapsed of the then current half year, such proportional interest to be paid at the time of paying the principal. NOW THIS INDENTURE WITNESSETH, that, in consideration of the said intended marriage, it is hereby declared and agreed by and between the said parties to these presents, that the said [trustees], and the survivor of them, and his executors or administrators, shall and do stand possessed of the said bill of exchange and bond, and the principal and interest monies thereby respectively secured, upon the trusts following, that is to say, until the solemnization of the said intended marriage between the said [*intended husband*] and [*intended wife*], *In trust* for the said [*father*], his executors, administrators, and assigns; And after the solemnization thereof, *Upon trust*, that they the said [trustees], and the survivor of them, and his executors or administrators, shall and do, from time to time, when and as the monies secured by the said bill of exchange and bond (*e*) respectively shall become due and payable (*f*), call in and receive the said principal sums of 500*l.* and 1500*l.*, and shall and do with the consent in writing of the said [*intended wife*], or if she shall be then dead, then of the proper authority of the trustees or trustee for the time being of this settlement, lay out the monies so to be received as aforesaid, in the names or name of such trustees or trustee for the time being, in or upon any of the parliamentary stocks or funds of Great Britain and Ireland, or upon real securities in England at interest, and from time to time so often as it shall be deemed expedient so to do, with such consent as aforesaid, or of the proper authority of such trustees or trustee as aforesaid, shall and do vary, alter, and transpose all or any of such stocks, funds, or securities, for any other stocks, funds, or securities; and the said trustees or trustee for the time being are and is hereby empowered from time to time to give effectual receipts for the money which in the execution of the said trust shall come to the hands of the said trustees or trustee, exonerating the persons paying the same from all

OF PORTION  
SECURED BY  
BOND AND BILL  
OF EXCHANGE.

*Testatum.*

Declaration of  
trusts.

Trust for the  
settlor until the  
marriage.

After the mar-  
riage, trust for  
investment;

—with power  
to vary funds.

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(*e*) “covenant.”

(*f*) If the trustees are to have a discretionary power to postpone the payment, add an express declaration to this effect, *ut ante*, p. 142.

OF PORTION  
SECURED BY  
BOND AND BILL  
OF EXCHANGE.

Upon trust to  
pay the interest  
to the wife for  
her life for her  
separate use.

With restraint  
on alienation,  
and after her  
decease,

Among the  
children and  
issue as the in-  
tended wife shall  
appoint.

In default of ap-  
pointment  
among the chil-  
dren attaining  
twenty-one, or  
marrying,  
equally.

responsibility in respect of the application thereof: And as to all such stocks, funds, and securities, and the dividends, interest, and produce to arise therefrom; And also, as to the interest to become due and payable under or by virtue of the hereinbefore mentioned bill of exchange and bond (*g*), or either of them, before the principal monies secured thereby respectively shall have been paid as aforesaid, *Upon trust*, that the said [*trustees*], or the survivor of them, and his executors or administrators, shall and do receive the said interest, dividends, and annual produce of the said trust monies and premises, and from time to time pay the same unto the said [*intended wife*], or permit her to receive the same during her life for her separate use, free from the control and debts as well of the said [*intended husband*], as of any future husband with whom she may intermarry (*h*), and so that she shall have no power during her said intended or any future coverture, to alien or anticipate the same; And after the decease of the said [*intended wife*], as to and concerning the said trust monies and premises, *In trust* for the child, or, if more than one, all the children of the said [*intended wife*] by the said [*intended husband*] or any future husband with whom she may intermarry, or for one or more of such children to the exclusion of any other or others, or for the grandchildren or other issue of the said [*intended wife*], or one or more of such grandchildren and issue, in such shares, and to be vested and payable at such time and times, and with such conditions, limitations over, and provisions, in all respects, for the benefit of such child, children, grandchildren, and issue, as the said [*intended wife*] shall by any deed or deeds, to be sealed and delivered in the presence of and attested by one witness or more, or by her last will and testament to be signed in the presence of and attested by two witnesses or more, direct or appoint; And in default of such direction or appointment, *In trust* for such child, or, if more than one, all such children of the said [*intended wife*] by the said [*intended husband*] or any future husband with whom she

(*g*) "covenant."

(*h*) It will be observed, that all the trusts and provisions of the present deed have regard to any future as well as to the intended marriage.



OF PORTION  
SECURED BY  
BOND AND BILL  
OF EXCHANGE.

In default of  
children, ulti-  
mate trust for  
the settlor.

Hotchpot  
clause.

Power to the  
wife to bequeath  
to the intended  
or any future  
husband for life.

may intermarry, as shall attain the age of twenty-one years or marry (*i*), if more than one, in equal shares as tenants in common, for the absolute use and benefit of such child and children; the share of each such child to be paid or transferred at the said age of twenty-one years or marriage, which shall first happen, or so soon afterwards as the decease of the said [*intended wife*] will admit of; And in case there shall be no child of the said [*intended wife*] by her said intended or any future husband, or being such, he, she, or they shall die under the age of twenty-one years without having been married, then as to the said trust monies and premises, or so much thereof as shall not have been effectually disposed of under the power of appointment hereinbefore contained, or which shall not have been applied under the power of advancement hereinafter contained, *In trust* for the said [*father*], his executors, administrators, and assigns, for his and their own absolute use and benefit; and upon or for no other trust, intent, or purpose whatsoever. *Provided always*, and it is hereby agreed and declared, that in case any partial appointment shall be made of the said trust monies and premises, in pursuance of the power or authority hereinbefore contained, no child or children of the said [*intended wife*], taking the benefit thereof, shall (unless the contrary shall be expressed in such appointment,) have or be entitled to any further or other share of or in the unappointed portion or interest of the said trust monies and premises, without bringing his, her, or their appointed share or respective shares into hotchpot, and accounting for the same accordingly. *Provided also*, and it is hereby further declared, that notwithstanding the trusts hereinbefore declared, it shall be lawful for the said [*intended wife*], by her will or any other testamentary writing, to be signed by her in the presence of and attested by two witnesses or more, to appoint or bequeath unto or in trust for the said [*intended husband*], in case he shall survive her, or unto or for any future husband surviving her the said [*intended wife*], the interest, dividends, and annual produce of the said trust monies and

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(*i*) This trust for children is framed in conformity to a suggestion, *ante*, p. 174.

OF PORTION  
SECURED BY  
BOND AND BILL  
OF EXCHANGE.

Provision for  
maintenance.

premises or any part thereof, for the term of the natural life of such husband, or any shorter or less period; *Provided also*, and it is hereby further declared, that in case, at the decease of the said [*intended wife*], any child or children or other issue, who under the trusts hereinbefore contained, or under any appointment to be made by virtue of the same trusts, shall be presumptively entitled to any share or respective shares of the said trust monies and premises, shall be under the age of twenty-one years and unmarried, then and in such case (subject to any contrary direction in any such appointment), it shall be lawful for the trustees or trustee for the time being of this settlement, to apply the annual income arising from the presumptive share or respective shares of such child or children or other issue respectively, in or towards his, her, and their maintenance and education, until such presumptive share or shares shall become actually payable or transferable; and the unapplied income, if any, shall from time to time be added to the share or respective shares whence the same shall have arisen; but with power nevertheless for the said trustees or trustee, if they or he shall think fit, to apply such accumulated fund and the income thereof, in or towards the subsequent maintenance and education of the child or children, or issue, to whom the same shall presumptively belong (*k*); *Provided also*, and it is hereby further declared, that it shall be lawful for the trustees or trustee for the time being, with the consent in writing of the said [*intended wife*], and, after her decease, of their or his own proper authority, to apply any part not exceeding one half of the capital of the presumptive or expectant share or respective shares of any child, children, or issue of the said [*intended wife*] in the said trust monies and premises, under the trusts hereinbefore declared, or under any appointment to be made by virtue of the same trusts as aforesaid, (subject nevertheless to any direction or regulation to the contrary in such appointment), in or towards the apprenticing of any such child, children, or issue, or otherwise for his, her, or their advancement or preferment in the world, in such

Provision for ad-  
vancement.

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(*k*) *Vide* more full provisions for maintenance and advancement, *ante*, p. 141.

manner as the said trustees and trustee shall think proper.  
*(Add power to invest in land if so intended, ut ante, p. 165; Also, power to appoint new trustees, ut ante, p. 131);*  
 IN WITNESS, &c.

OF PORTION  
 SECURED BY  
 BOND AND BILL  
 OF EXCHANGE.

ASSIGNMENT (a), *previously to MARRIAGE, of the Lady's Right of DOWER (before its Assignment) out of her deceased Husband's Estates;—of a LEASEHOLD Property, and Jewels, Trinkets, and HOUSEHOLD FURNITURE and other PERSONAL CHATTELS, Upon Trusts for the Benefit of the Intended Wife and her Children by her former and also by her intended Marriage;—Authority to bring Actions, &c., for the Dower;—Settlement of the beneficial Interest of the intended Wife in her late HUSBAND'S PERSONAL ESTATE, under his Intestacy;—and Covenants respecting the making up of her Accounts as Administratrix. (Variation where the LEASEHOLDS are UNDERLEASED).*

DOWER,  
 LEASEHOLDS,  
 AND  
 HOUSEHOLD  
 FURNITURE, &c.

**T**HIS INDENTURE, of three parts, made the —— day  
 of ——, BETWEEN [*intended wife*], of &c., widow and re- Parties

(a) Where the leaseholds about to be settled are subject to a rent and covenants of an onerous nature, it is advisable to make the settlement by way of underlease, in order to exempt the trustees from the liability which they would incur by taking an assignment; but this is a practice not proper for universal and indiscriminate adoption, being productive of inconveniences which indeed may be outweighed by the propriety of protecting the trustees, but ought not to be incurred without occasion. Whenever the settlement is by way of demise, it should be distinctly shewn that the rent and covenants of the lease are to be discharged by the grantees; because, otherwise, there is ground to contend that they, as under-lessees, are entitled, as between them and the settlor or his representatives, to take the property, free from the obligations of the lease, or, in other words, to call on their lessor to save them harmless, under the implied warranty resulting from the words of demise, which is never

As to making  
 the settlement  
 by way of underlease.

DOWER,  
LEASEHOLDS,  
AND  
HOUSEHOLD  
FURNITURE, &c.

Recital that the  
intended wife  
was entitled to  
dower.

—Of lease.

lict and administratrix of the goods, chattels, and credits of [deceased husband], late of &c., deceased, of the first part; [intended husband], of &c., of the second part; and [trustees], of &c., of the third part. WHEREAS the said [intended wife] is now entitled to dower, or thirds, at the common law, of and in the several freehold messuages or tenements, lands and hereditaments, whereof the said [deceased husband], her late husband, was seised, for any estate of inheritance in possession, at any time during the coverture, but no assignment of such dower, by metes and bounds or otherwise, hath yet been made to her. AND WHEREAS, by an indenture of lease bearing date the — day of —, and made or expressed to be made between the most noble — Duke of —, of the one part, and [lessee], therein named and described, of the other part, for the considerations therein mentioned the said Duke of — did demise, lease, set, and to farm let unto the said [lessee], his executors, administrators, and assigns, *All that piece*

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the intention of the parties. There is little doubt, indeed, that such implied warranty (supposing it to exist) may be repelled by very slight circumstances; such, probably, as that of the grantor having merely covenanted that he had not incumbered, (see *Amb. 247*); yet, if there is a total absence of every such circumstance, it seems difficult, upon general principles of law, to deny to a grantee whose claim is founded on the consideration of marriage, the full benefit of the warranty in question. In *Saltern v. Melhuish*, *Amb. 247*, Lord *Hardwicke* considered that the implied covenant resulting from the words of grant in a voluntary assignment of a lease from a father to a daughter, was repelled by the circumstance of the deed containing no other covenant by a third person, in whom the legal estate was vested, than that he had not incumbered. The argument drawn from this covenant seems to be very weak, as a covenant against incumbrances is the only covenant that a trustee can properly enter into. From the tenor of the judgment, however, it is evident that his Lordship's opinion was, that, by the general rule, words of grant in a voluntary conveyance do not raise an implied warranty entitling the grantee to satisfaction out of the grantor's assets, in case of eviction. *Vide also ante*, Vol. 8, p. 154. Whether his Lordship would have carried the principle so far as to negative the claim of a voluntary under-lessee to have the rent and covenants of the original lease discharged out of the donor-lessor's estate, does not appear. Clearly, however, the doctrine is not applicable to settlements which are sustained by the valuable consideration of marriage.



or parcel of ground, with the messuage or tenement and coach-house and stable thereon, erected and built, &c., (*describe parcels*), Together with all appurtenances whatsoever to the said premises thereby demised belonging, or in anywise appertaining, or therewith then used and enjoyed; To hold the same unto the said [*lessee*], his executors, administrators, and assigns, from the Feast of the Annunciation of the Blessed Virgin Mary, 18—, for and during and unto the full end and term of — years from thence next ensuing and fully to be complete and ended, at, under, and subject to the rents, covenants, and agreements in the said indenture of lease reserved and contained. AND WHEREAS, by sufficient ways and means in the law, the premises comprised in the said recited indenture of lease, are since lawfully come unto, and are now vested in the said [*intended wife*], and the said [*intended wife*] is also possessed of and entitled to certain plate, linen, china, books, pictures, and household goods and furniture in and about the said leasehold messuage or tenement and premises, of a considerable value and amount; And she is also possessed of divers jewels, watches, rings, trinkets, and other ornaments of her person and dress. AND WHEREAS the said [*intended wife*], as administratrix of the goods and chattels and credits of her said late husband, and as his widow or otherwise, now is possessed of or entitled to divers monies, stocks, funds, or securities for monies or other personal estate, to a considerable amount; But, in regard that the said [*intended wife*] hath not yet paid or transferred unto her three children by her said late husband their respective shares of the personal estate and effects of her said late husband, come to her hands or possession, nor finally adjusted and closed the accounts of the administration of the estate and effects of her said late husband, the particulars of the said last-mentioned monies, stocks, funds, and securities, and other personal estate, cannot at present be specified, nor can the amount thereof be now exactly ascertained. AND WHEREAS a marriage is intended shortly to be solemnized between the said [*intended husband*] and [*intended wife*]. AND WHEREAS, upon the treaty for the said intended marriage, it was agreed between the said [*intended husband*] and [*intended wife*], that such right and title of dower as aforesaid, and all benefit and advantage thereof, and the said messuage or tenement and

DOWER,  
LEASEHOLDS,  
AND  
HOUSEHOLD  
FURNITURE, &c.

—That lease  
had become  
vested in the  
intended wife.

—That she was  
possessed of  
plate, &c.

—That she was  
possessed of  
property, as the  
administratrix  
of her deceased  
husband.

—Of intended  
marriage.

—Agreement  
for a settlement.

DOWER,  
LEASEHOLDS,  
AND  
HOUSEHOLD  
FURNITURE, &c.

premises comprised in the said indenture of lease, together with the plate, linen, china, books, pictures, and household goods and furniture in and about the same, and the said jewels, watches, rings, trinkets, and ornaments of the person and dress of the said [*intended wife*], and all other her paraphernalia whatsoever; and also all the said other monies, stocks, funds, or securities, or other personal estate, which the said [*intended wife*] is now entitled to as aforesaid, as soon as the said particulars and accounts thereof can be specified and ascertained, shall be respectively granted (b), assigned, and transferred and vested in the said [*trustees*], Upon the trusts, and for the intents and purposes, and subject to the powers and authorities hereinafter expressed concerning the same respectively. NOW THIS INDENTURE WITNESSETH, that, in consideration of the said intended marriage, and in pursuance of the agreement aforesaid, she the said [*intended wife*], (with the privity and consent of the said [*intended husband*], testified by his sealing and delivery of these presents), Doth by these presents (c) grant, bargain, sell, assign, transfer, and set over

*Testatum.*

Assignment by  
the intended  
wife of dower,

Variation where  
the leaseholds  
are underleased.

(b) If the leaseholds are underleased, add "demised."

(c) If the leaseholds are underleased, proceed as follows—

"grant, bargain, sell, and demise unto the said [*trustees*], their executors, administrators, and assigns, ALL THAT the said piece or parcel of ground, with the said messuage or tenement, coach-house and stable thereon erected and built, severally hereinbefore described, and all and singular other the premises which in and by the said recited indenture of lease were demised and leased, or mentioned so to be, with their and every of their appurtenances: TO HAVE AND TO HOLD the said messuage or tenement, coach-house and stable, and other the premises hereby demised or intended so to be, unto the said [*trustees*], their executors, administrators, and assigns, henceforth during all the residue and remainder now to come and unexpired of the said term of — years, granted by the hereinbefore recited indenture of lease, except the last day of the said term, and for all other the estate, term, and interest of the said [*intended wife*] therein, except the last day of such her estate, term, and interest, UPON TRUST that they the said [*trustees*], and the survivors and sur-

*Habendum.*

Upon trust to

unto the said [*trustees*], their executors, administrators, and assigns, ALL such right and title of dower and thirds, at the common law, as she the said [*intended wife*] now hath or is entitled to of or in the several freehold messuages or tenements, lands and hereditaments in London or elsewhere, which the said [*deceased husband*], her late husband, was seised of or entitled to at any time during the coverture which determined on his decease; And all benefit and advantage of such dower and thirds which the said [*intended wife*] is now entitled to, or which she can or may have, take, or claim, upon any assignment thereof by metes and bounds or otherwise, hereafter to be made; *And also*, ALL THAT the said piece or parcel of ground, with the said messuage or tenement, coach-house and stable thereon erected and built, severally hereinbefore described, and all and singular other the premises, which in and by the said recited indenture of

DOWER,  
LEASEHOLDS,  
AND  
HOUSEHOLD  
FURNITURE, &c.  
leaseholds,  
household fur-  
niture, &c.

vivor of them, and his executors or administrators, shall and do, by and out of the yearly rents and profits of the said leasehold premises, pay the annual rent reserved by the hereinbefore recited indenture of lease; and shall and do execute and perform all such acts, matters, and things concerning the said premises, as by or according to the terms of the said indenture of lease, and the conditions and covenants thereof, are covenanted and agreed to be observed and performed; and subject thereto, UPON TRUST that they the said [*trustees*], and the survivors and survivor of them, his executors or administrators, shall and do stand possessed of the said leasehold premises, and the rents and profits arising therefrom, upon the trusts, and for the intents and purposes, and subject to the powers and authorities hereinafter expressed concerning the same. AND THIS INDENTURE FURTHER WITNESSETH, that, in consideration of the said intended marriage, and in further pursuance of the agreement aforesaid, she the said [*intended wife*], with the privity, consent, and approbation of the said [*intended husband*], testified as aforesaid, *Doth* by these presents, (*proceed with the precedent in the text, from the place of the introduction of this variation, omitting, in the description of the parcels, the leasehold premises*)."

pay the rent  
and perform the  
covenants.

Further testa-  
tum.

DOWER,  
LEASEHOLDS,  
AND  
HOUSEHOLD  
FURNITURE, &c.

Jewels, &c.

*Habendum.*

In trust for the  
wife, until the  
marriage.

—And then  
upon the trusts  
after declared.

Letter of attor-  
ney to sue for  
dower.

lease of the — day of — were demised and leased, or mentioned so to be, with their and every of their appurtenances; *And also*, all and singular the plate, linen, china, books, and household goods and furniture whatsoever of her the said [*intended wife*], now being in, upon, or about the said leasehold messuage or tenement and premises: And all benefit and advantage thereof; *And also*, all and singular the jewels, watches, rings, trinkets, ornaments of the person and dress, and paraphernalia whatsoever of her the said [*intended wife*]; And also all the estate, right, title, trust property, profit, claim, and demand whatsoever at law and in equity of her the said [*intended wife*], of, in, to, and out of all and singular the said premises hereinbefore assigned or intended so to be; Together with the said recited indenture of lease, and all assignments thereof: TO HAVE AND TO HOLD all and singular the said premises hereinbefore assigned or intended so to be, with their and every of their appurtenances, unto the said [*trustees*], their executors, administrators, and assigns, from henceforth, for all such estate and interest as the said [*intended wife*] now hath or can claim therein respectively; *In trust*, nevertheless, for her the said [*intended wife*], her executors, administrators, and assigns, until the said intended marriage shall be solemnized; And from and immediately after the solemnization thereof, Upon the several trusts, and for the intents and purposes, and subject to the powers and authorities hereinafter expressed concerning the same respectively. AND the said [*intended husband*] and [*intended wife*] *Do*, and each of them *Doth*, by these presents constitute and appoint the said [*trustees*], and the survivors and survivor of them, his executors or administrators, to be the true and lawful attornies and attorney of them the said [*intended husband*] and [*intended wife*] respectively, in their, his, or her names or name, or otherwise, but nevertheless upon the trusts hereinbefore expressed concerning the same, at any time or times after the solemnization of the said intended marriage, to demand, sue for, recover, and receive of and from the heir-at-law of the said [*deceased husband*], deceased, or other the person or persons whom it shall or may concern, the said dower and thirds, the right and title whereto are hereby assigned or intended so to be, and for that pur-



pose to commence and prosecute such actions, suits, or other proceedings at law or in equity as shall be deemed expedient to compel the assignment of the said dower and thirds, or otherwise for the enforcement of the right and title to the same; And also, for and in the names or name of the said [*intended husband*] and [*intended wife*], or one of them, to accept such a share or proportion of the rents and profits of the hereditaments in respect of which the said [*intended wife*] is dowable, or such other annual sum in satisfaction and discharge of the said dower and thirds, as the said trustees or trustee shall think proper; And thereupon for and in the names or name of the said [*intended husband*] and [*intended wife*], or one of them, to give full and effectual releases, acquittances, and discharges for the same, exonerating any person or persons paying any sum or sums of money on account thereof, from all responsibility in respect of the application thereof. (*Add the usual power to appoint substitutes and agreement to ratify*). AND THIS INDENTURE FURTHER WITNESSETH, that, in consideration of the said intended marriage, and for further effectuating the agreement made upon the treaty for such marriage, *She* the said [*intended wife*], with the privity and consent of the said [*intended husband*], testified as aforesaid; And the said [*intended husband*] doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*trustees*], their executors and administrators, that they the said [*intended husband*] and [*intended wife*], shall and will within six calendar months after the solemnization of the said intended marriage, make up and adjust a full and fair account in writing of all and singular the goods and chattels, and personal estate and effects of the said [*deceased husband*], her late husband, deceased, which have at any time come to her hands or possession, and of her payments and disbursements thereout, and of her administration of the same; And shall and will thereupon well and truly pay or transfer, assign, and make over unto [*three children*], the three children of the said [*intended wife*], party hereto by her said late husband respectively, or unto trustees for their respective use and benefit, all and every such part or share, or parts or shares as they the said children are or shall be respectively entitled to, of and in the

DOWER,  
LEASEHOLDS,  
AND  
HOUSEHOLD  
FURNITURE, &c.

Authority to accept satisfaction.

Further *testamentum*.

Covenant respecting the making up of the accounts of the intended wife as administratrix, and the settlement of her beneficial interest.

DOWER,  
LEASEHOLDS,  
AND  
HOUSEHOLD  
FURNITURE, &c.

Declaration of  
trusts.

personal estate and effects of the said [*deceased husband*], their late father, under and by virtue of the custom of London and the statute of distributions or otherwise howsoever, together with all savings or accumulations of the yearly income which have arisen from such parts or shares respectively, after deducting all just and reasonable allowances; And from and after the payment, transfer, or assignment thereof, that they the said [*intended husband*] and [*intended wife*] shall and will forthwith well and truly pay or transfer, assign, and make over by such ways or means in the law as shall be found necessary or expedient unto the said [*trustees*], their executors and administrators, All and every such part or share, or parts or shares, as she the said [*intended wife*] shall, upon the taking of such accounts as aforesaid, appear to be entitled to of and in the personal estate and effects of the said [*deceased husband*], her late husband, deceased, under and by virtue of the custom of London, the statute of distributions, or otherwise howsoever, Upon the trusts nevertheless, and for the intents and purposes, and subject to the powers and authorities hereinafter expressed concerning the same. And in consideration of the said intended marriage, and of all and singular other the premises, it is hereby declared and agreed by and between the said parties hereto, That they the said [*trustees*], their executors and administrators, shall, after the solemnization of the said intended marriage, stand and be possessed and interested as well of and in the said dower and thirds, or right and title to dower and thirds, as the said leasehold messuage, tenement, or premises, and other the goods, chattels, and effects hereinbefore expressed to be hereby granted (*d*) and assigned; And also, of and in all and singular the monies, stocks, funds, and securities for money or other effects, which shall be paid, transferred, assigned, and made over to them the said [*trustees*], their executors and administrators, in pursuance of the covenant of the said [*intended husband*] and [*intended wife*] in that behalf hereinbefore contained, upon and for the several trusts, intents, and purposes, and subject to the several powers and authorities hereinafter

As to the dower, expressed concerning the same, that is to say, *As to, for,*

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(*d*) If the leaseholds are underleased “demised.”

and concerning the said dower and thirds, or right and title to dower and thirds which is determinable on the death of the said [*intended wife*]; And the said leasehold messuage or tenement and premises, with the appurtenances in — street aforesaid, and the said other effects so covenanted to be paid, transferred, assigned, and made over to them the said trustees after the solemnization of the said intended marriage as aforesaid, UPON TRUST that they the said [*trustees*], and the survivors and survivor of them, his executors or administrators, do and shall from time to time during the joint lives of the said [*intended husband*] and [*intended wife*], pay the clear yearly rents and profits, dividends, interest, and proceeds thereof as the same shall from time to time arise and be received by them or him, unto the said [*intended wife*] for her sole and separate use and benefit, and to the intent that the same may not be at the disposal, or subject or liable to the control or intermeddling of the said [*intended husband*], her intended husband; And in case the said [*intended husband*] shall happen to die in the lifetime of the said [*intended wife*], then Upon trust that they the said [*trustees*], or the survivors or survivor of them, his executors or administrators, do and shall immediately upon and after the decease of the said [*intended husband*], reconvey the said dower and thirds unto her the said [*intended wife*], and do and shall re-assign the said leasehold messuage or tenement and premises in — street aforesaid, with the appurtenances unto the said [*intended wife*], for her own absolute use and benefit; But in case the said [*intended wife*] shall happen to die in the lifetime of the said [*intended husband*], then Upon trust that they the said [*trustees*], and the survivors and survivor of them, his executors or administrators, do and shall from and after the decease of her the said [*intended wife*], assign the same leasehold premises to such person or persons (*e*), and for such uses, intents, and purposes, and in such parts and proportions, manner and form as she the said [*intended wife*], not-

DOWER,  
LEASEHOLDS,  
AND  
HOUSEHOLD  
FURNITURE, &c.

leaseholds, and  
share of person-  
alty—

In trust for the  
intended wife  
for her separate  
use during the  
joint lives.

In case the hus-  
band shall die  
first, then for  
the wife abso-  
lutely.

In the alterna-  
tive event other  
trusts.

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(*e*) In this precedent, it will be observed, the power is general, and is not confined to the persons to whom the property is given over in default of appointment. In this respect it differs from all that have preceded it.

DOWER, .  
LEASEHOLDS,  
AND  
HOUSEHOLD  
FURNITURE, &c.

withstanding her said intended coverture by any deed or deeds, writing or writings, with or without power of revocation, to be by her sealed and delivered in the presence of and attested by two or more credible witnesses, or by her last will and testament in writing, or any codicil thereto, or any writing purporting to be or in the nature of her last will and testament or codicil, to be by her signed and published in the presence of and attested by the like number of credible witnesses, shall direct or appoint; And in default of and subject to any such direction or appointment, then UPON TRUST that the said [*trustees*], and the survivors and survivor of them, his executors or administrators, do and shall assign, transfer, or pay over all and singular the said trust premises, unto or between and amongst all and every such of them the said [*three children*], the three children of the said [*intended wife*] by her said late husband deceased, and such of the children of the said [*intended wife*] by the said [*intended husband*], her intended husband, as shall be living at the time of her decease, and also all and every the issue then living of such of the children of the said [*intended wife*] by her said late husband, and also of such of her children by her said intended husband respectively, as may be then dead, leaving issue, in equal shares and proportions(*f*); But so that the issue

Remark on the plan of substituting the issue for a deceased parent.

(*f*) Here an illustration is afforded of a mode of providing for children and their issue different from that of any former precedent. The trust embraces the children living at the decease of their mother, the prior *cestui que trust* for life, and the issue (if any) then living of those who may antecedently have died. The substitution of the issue for the deceased parents seems upon the whole rather better than vesting the shares in the deceased parents themselves, in the event of their leaving issue; because it insures to the issue in question their ancestors' shares, the benefit of which might never have devolved to them as representatives. The disadvantage attending this mode of disposition is, that it prevents children, marrying before the prescribed period of vesting, from making an effectual settlement in favour of the intended husband or wife, which probably has induced the preference so generally given to the plan of vesting the shares of sons at majority, and of daughters at majority or marriage; but in order fully to attain the object, the shares of sons as well as daughters should be made to vest at majority or marriage.

The objection commonly urged to this plan is, that it encourages the marriage of sons at a period when the incapacity of minority renders it undesirable.



of every such deceased child of every degree shall take equally amongst them, if more than one, only the share which his, her, or their deceased parents would have been entitled to if then living, *per stirpes*, and not *per capita*, the respective shares of such said children and grandchildren, or other issue, to belong to and be an interest vested in them respectively, immediately upon and after the decease of the said [*intended wife*], and to be paid or assigned, transferred, and made over to them respectively, when and as soon as they shall be respectively capable of giving a sufficient release and discharge for the same; And in the meantime, the annual income or produce thereof to be applied by the trustees or trustee for the time being of these presents, for or towards the maintenance and education of such child or children respectively (g). (*In default of children or issue living at the intended wife's decease, In trust for her next of kin*, ut ante, p. 140). *And as to, for, and concerning* the said plate, linen, china, books, pictures, and household goods and furniture hereinbefore expressed to be hereby assigned, *Upon trust* that they the said [*trustees*], and the survivors and survivor of them, his executors or administrators, do and shall permit and suffer the said [*intended wife*] during the joint lives of herself and the said [*intended husband*], notwithstanding her coverture, to have the possession and enjoyment of the same for her sole and separate use, independently of him the said [*intended husband*], and so that the same may not be at the disposal or subject or liable to the debts, control, or intermeddling of him the said [*intended husband*] in anywise howsoever; AND from and immediately after the decease of either of them the said [*intended husband*] and [*intended wife*], then do and shall permit and suffer the survivor of them, and his or her executors or administrators, to have and take the same to and for his, her, or their own absolute use and benefit, as his or her and their own proper goods and chattels for ever. *And as to, for, and concerning* the said jewels, watches, rings, trinkets, ornaments of the person, and paraphernalia of the said

DOWER,  
LEASEHOLDS,  
AND  
HOUSEHOLD  
FURNITURE, &c.

Declaration of  
trusts as to  
plate and furni-  
ture.

Declaration of  
trusts as to jew-  
els, &c.

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(g) *Vide* more full and complete provisions for maintenance, ante, pp. 129, 141.

DOWER,  
LEASEHOLDS,  
AND  
HOUSEHOLD  
FURNITURE, &c.

[*intended wife*], party hereto, hereinbefore expressed to be hereby assigned, *Upon trust* that they the said [*trustees*], and the survivors and survivor of them, his executors or administrators, do and shall permit and suffer her the said [*intended wife*], from time to time and at all times hereafter, notwithstanding her said intended coverture, to have, use, possess, and enjoy, and to sell, give, and dispose of the same and every or any part thereof respectively in her lifetime, or by her last will and testament, or any writing in nature thereof, in such manner as she shall think proper, independent of the said [*intended husband*], and without the same being in anywise subject to his debts or control, and as fully and effectually to all intents and purposes as if the said [*intended wife*] was a *feme sole*, and unmarried; And after her decease, as to such part or parts thereof as shall not be disposed of by her, *In trust* for her executors or administrators. (*Add power to the trustees to vary funds, give discharges, also to demise and sell the leaseholds, and for the intended wife to appoint new trustees, ut ante, p. 124 (h).*) IN WITNESS, &c.

Remark upon  
the power of ap-  
pointment.

(h) Where there is an absolute power of appointment, exercisable in all events, powers of this nature are comparatively of little value; because the donee may, by means of the power, deal with the property as complete owner; but these powers lose none of their importance in the present instance, on account of a general power of disposition being reserved to the *cestui que trust*, because that power is contingent, being to take effect only in the event of her dying in the lifetime of her husband; in the alternative event of her surviving him she takes the property absolutely, which contingent interest, it has been decided, she is incompetent to alien or affect by any act during the coverture. *Richards v. Chambers*, 10 Ves. 580.

MARRIAGE SETTLEMENT *limiting the* FREEHOLDS  
*Freehold* ESTATES of the intended HUSBAND ON MARRIAGE.  
 and WIFE respectively to the Use of them suc-  
 cessively for LIFE, with Remainder (subject  
 to a Power to the Husband and Wife, and the  
 Survivor, to APPOINT to or in Trust for any  
 CHILD, CHILDREN, or other ISSUE), to the CHIL-  
 DREN EQUALLY in TAIL; with Cross Remain-  
 ders; Ultimate LIMITATION to the RESPECTIVE  
 SETTLORS; and POWERS to LEASE, SELL, and EX-  
 CHANGE. COVENANTS for TITLE by the Settlers  
 respectively.

THIS INDENTURE, of three parts, made the — Parties.  
 day of —, BETWEEN [*intended husband*], of &c., of the  
 first part; [*intended wife*], of &c., spinster, of the second  
 part; and [*trustees*], of &c., of the third part: WHEREAS a Recitals of the  
 marriage is intended shortly to be had and solemnized be- intended mar-  
 tween the said [*intended husband*] and [*intended wife*]. riage;  
 AND WHEREAS the said [*intended husband*] is seised or en- —that the in-  
 titled in fee-simple of or to the — and hereditaments tended husband  
 hereafter expressed to be hereby granted and released by is seised of  
 him; And the said [*intended wife*] is seised or entitled lands in fee;  
 in fee-simple of or to the — and hereditaments hereinafter —that intended  
 expressed to be hereby granted and released by her. AND wife is also seis-  
 WHEREAS, upon the treaty for the said intended marriage, the ed of lands in  
 said [*intended husband*] and [*intended wife*] respectively fee;  
 agreed to convey, settle, and assure the said several —agreement for  
 and hereditaments, whereof or whereto they are so respec- settling the  
 tively seised or entitled as aforesaid, To the several uses, same respective-  
 upon and for the several trusts, intents, and purposes, and ly.  
 under and subject to the several provisoes, declarations, and  
 agreements hereinafter limited and declared concerning the  
 same respectively. NOW THIS INDENTURE WIT- Testatum.  
 NESSETH, that, in consideration of the said intended The intended  
 marriage, and in pursuance of the aforesaid agreement, so husband releas-  
 far as the same relates to the estates of the said [*intended* es his lands to  
 trustees.

**FREEHOLDS  
ON MARRIAGE.**

Intended husband conveys his estates to the uses after mentioned.

*Habendum.*

To the use of the intended husband till the marriage, after the marriage to the uses after limited.

Further *testa-  
tum.*

Intended wife, with the privity of the intended husband conveys her lands to trustees.

*Habendum.*

—to the use of

*husband*], and also in consideration of the sum of 10s. of lawful money of Great Britain and Ireland, paid by the said [*trustees*] to the said [*intended husband*], at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, *He* the said [*intended husband*] *Doth* by these presents grant, bargain, sell, release, and confirm unto the said [*trustees*] and their heirs, (in the actual possession, &c.), *ALL THAT, (parcels), Together* with all houses, &c., *And* the reversion, &c., *And* all the estate, &c., *TO HAVE AND TO HOLD* the said —, and all and singular other the hereditaments hereinbefore expressed to be hereby granted and released, with their appurtenances, unto the said [*trustees*] and their heirs, *To the use* of the said [*intended husband*] and his heirs, until the said intended marriage shall be solemnized; And immediately after the solemnization thereof, then to the several uses, and upon and for the several trusts, ends, intents, and purposes, and under and subject to the several provisoes, declarations, and agreements hereinafter limited and declared concerning the same. *AND THIS INDENTURE FURTHER WITNESSETH*, that, in consideration of the said intended marriage, and in pursuance of the aforesaid agreement, so far as the same relates to the estates of the said [*intended wife*], and also in consideration of the sum of 10s. of lawful money aforesaid, paid by the said [*trustees*] to the said [*intended wife*] at &c., the receipt &c., *She* the said [*intended wife*], with the privity and consent of the said [*intended husband*], her intended husband, testified by his sealing and delivering these presents (*a*), *Doth* by these presents grant, bargain, sell, release, and confirm unto the said [*trustees*] (in their actual possession, &c.), and to their heirs, *ALL THAT, (describe parcels), Together* with all houses, &c., *And* the reversion, &c., *And* all the estate, &c. *TO HAVE AND TO HOLD* the said —, and all and singular other the hereditaments lastly hereinbefore expressed to be hereby granted and released with their appurtenances, unto the said [*trustees*] and their heirs, *To the use* of the said [*in-*

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(a) The practice of making the intended husband an expressly consenting party to any conveyance of the estates of the intended wife, is founded on and warranted by the doctrine discussed, *ante*, p. 62, respecting settlements made during courtship in derogation of marital rights.



*tended wife*] and her heirs, until the said intended marriage shall be solemnized; and immediately after the solemnization thereof, then to the several uses, and upon and for the several trusts, ends, intents, and purposes, and subject to the several provisoes, declarations, and agreements hereinafter limited and declared concerning the same. And as to, for, and concerning all and singular the aforesaid — and premises, as well those granted and released by the said [*intended husband*], as those granted and released by the said [*intended wife*], from and immediately after the solemnization of the said intended marriage, *To the use* of the said [*intended husband*] and his assigns, for the term of his natural life, without impeachment of or for any manner of waste (*b*); And from and after the determination of that estate by forfeiture or otherwise in his lifetime, then *To the use* of the said [*trustees*] and their heirs, during the natural life of the said [*intended husband*], *Upon trust* to support and preserve the contingent uses and estates hereinafter limited from being defeated or destroyed, and for that purpose to make entries and bring actions as occasion shall require; *But nevertheless*, to permit the said [*intended husband*] and his assigns, during his life, to receive the rents and profits of the said premises, for his and their own use and benefit; And immediately after the decease of the said [*intended husband*], then *To the use* of the said [*intended wife*] for and during the term of her natural life, without impeachment of or for any manner of waste, as

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herself and her heirs till the marriage, and then to the uses after mentioned;

—and as to all and singular the premises after the marriage;

—to the use of intended husband for life, and to trustees to preserve the contingent remainders;

—remainder to intended wife for life, for her jointure and in bar of dower;

(*b*) Where several successive estates for life are limited, which are followed by contingent remainders, it is usual to insert after each life estate a limitation to trustees to preserve the contingent remainders. There is on the first impression an appearance of inaccuracy in interposing a limitation of this nature between vested estates, but it is essential to the effectual preservation of the remainders in *every* event, on account of the uncertainty which exists as to the order in which the estates for life will determine; for it is obvious, that by the failure of the particular estate in remainder in the lifetime of the *prior* tenant for life, the contingent remainders may eventually become dependent on *his* estate. It is not necessary, however, to introduce a distinct limitation after each life estate, but one applicable to the whole series may be interposed between the ulterior estate for life and the contingent remainders which are to be supported, of which examples will be found in succeeding precedents.

As to the limitation to trustees to preserve contingent remainders.

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—remainder to such child or children of the marriage, or his, her, or their issue, as husband and wife shall appoint;

and for her jointure, and in lieu, bar, and full satisfaction of and for all dower and thirds, and freebench, at common law or by custom, which she might otherwise have or claim in or out of all or any of the freehold or copyhold lands, tenements, or hereditaments whereof or whereto the said [*intended husband*], her intended husband, at any time during the said intended coverture, shall be seised or entitled for any estate of freehold or copyhold of inheritance, or to which dower or freebench is incident; And after the determination of that estate by forfeiture or otherwise in her lifetime, *To the use* of the said [*trustees*], (*add limitation to preserve contingent remainders similar to the former*). And immediately after the decease of the survivor of them the said [*intended husband*] and [*intended wife*], *To the use* of all and every such one or more of the children of the body of the said [*intended husband*] on the body of the said [*intended wife*], his intended wife, to be begotten, or the issue of such child or children (born in the lifetime of the said [*intended husband*] and [*intended wife*], or the survivor of them), or to the use of any other person or persons whomsoever, *In trust* for such child, children, or issue (c), or any of them, either exclusively or in such parts, shares, or proportions, and for such estate or estates, interest or interests, with such limitations or remainders over, and charged and chargeable with the payment of such yearly sum or sums of money, (such limitations or remainders over and charges, nevertheless, to be for the benefit of some or one of such children or issue), and in such manner and form as they the said [*intended husband*] and [*intended wife*], by any deed or deeds, writing or writings, with or without power of revocation, to be by both of

Advantage of extending the power to strangers as trustees.

(c) Inconvenience frequently occurs in exercising powers in favour of a prescribed class of objects, from the inability to vest any estate in strangers as trustees, thereby imposing the necessity when an estate in trust is to be created under the power, of making some of the objects trustees for others, though coverture, infancy, or some other disability may have rendered the persons so nominated very ineligible for the office, especially if the trust is of a nature to involve the exercise of a discretion. This inconvenience is obviated by the terms of the present power, which authorize an appointment to "any person or persons whomsoever," in trust for the beneficial objects.

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them sealed and delivered in the presence of and attested by two or more credible witnesses, shall from time to time during their joint lives [(d) direct, limit, and appoint; And in default of such direction, limitation, or appointment, and in the meantime, and until any such shall be made, and in case any such direction, limitation, or appointment shall be made, *then*, when and as the estates and interests thereby created, raised, or limited, shall respectively end and determine, and as to such part or parts of the said — and hereditaments, whereof no such direction, limitation, or appointment shall be made, *To the use* of the child, or all and every or such one or more of the children of the said [*intended husband*] on the body of the said [*intended wife*], his intended wife, to be begotten, or the issue of such child or children (being born in the lifetime of the said [*intended husband*] and [*intended wife*], or one of them), or to the use of any other person or persons whomsoever, *In trust* for such child, children, or issue, either exclusively or in such parts, shares, or proportions, and for such estate or estates, interest or interests, and with such limitations or remainders over and charged and chargeable with the payment of such yearly sum or sums of money, (such limitations or remainders over and charges, nevertheless, to be for the benefit of some or one of such child, children, or issue), and in such manner and form] (e) as the survivor of them the said [*intended husband*] and [*intended wife*] shall from time to time, after the death of the other of them, by any deed or deeds, writing or writings, with or without power of revocation, to be by him or her sealed and delivered in the presence of and attested by two or more credible witnesses, or by his or her last will and testament in writing, or any codicil or codicils thereto, or any writing purporting to be or in the nature of his and her last will and testament, or codicil, to be by him or her signed and published in the presence of and attested by three or more credible witnesses, direct, limit, or appoint; And in default of such direction, limitation, or appointment, and in the meantime, and until any such shall be made,

—remainder to such child or children of the marriage, or his, her, or their issue, as the survivor of husband and wife shall appoint;

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(d) The clause in brackets might be properly omitted with the substitution merely of the word “or.”

(e) If the clause in brackets is omitted, add here—“or.”

FREEHOLDS  
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—remainder to all the children of the marriage as tenants in common in tail general, with cross remainders among them;

—remainder, as to the estates of the intended husband, to him in fee;

and in case any such direction, limitation, or appointment shall be made, *then* when and as the estates and interests thereby created, raised, or limited, shall respectively end and determine; *And* as to such part or parts of the said — and hereditaments, whereof no such direction, limitation, or appointment shall be made, *To the use* of all and every the child and children of the said [*intended husband*] on the body of the said [*intended wife*], his intended wife, to be begotten, equally, to be divided between them if more than one share and share alike, and they to take as tenants in common (*f*); *And* of the heirs of the body and respective bodies of all and every such child and children lawfully issuing; *And* in case there shall be a failure of issue of the body or bodies of any of such children, then as to the share or shares (as well surviving or accruing as original) of such of them whose issue shall so fail, *To the use* of the other child or children of the said [*intended husband*] on the body of the said [*intended wife*], his intended wife, to be begotten, equally to be divided between them if more than one, share and share alike, and they to take as tenants in common, and of the heirs of the body and respective bodies of such other child or children lawfully issuing; *And*, if all such children but one shall die without issue of his or her body, or there shall be originally but one such child, then *To the use* of such one or only child, and the heirs of his or her body lawfully issuing; *And* for default of such issue, *Then as to, for, and concerning* the said — and hereditaments hereinbefore expressed to be hereby granted and released by the said [*intended husband*] *To the use* of him the said [*intended husband*], his heirs and

As to the vesting of the remainder.

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(*f*) Under this limitation the children take vested estates as they come *in esse*, and indeed, in limiting real estate to children by way of remainder expectant on the decease of their parents, or one of them, (the prior tenants or tenant for life), it is always improper to postpone the vesting until the age of twenty-one or marriage, because it leads to this consequence, that if the prior estates or estate for life should happen to determine before the majority or marriage of any child, *the remainder to the children would wholly fail*, unless an estate were interposed in a trustee for the express purpose of preserving the remainder in such event.



assigns, for ever (*g*), *And as to, for, and concerning* the said — and hereditaments hereinbefore expressed to be hereby granted and released by the said [*intended wife*], *To the use* of such person or persons, for such estate or estates, and in such parts, shares, or proportions, and for such ends, intents, and purposes, and under and subject to such powers, provisoes, limitations, and declarations, and charged and chargeable with such yearly sum or sums of money, and in such manner and form, as the said [*intended wife*] shall at any time, notwithstanding her said intended coverture, or any future coverture she may happen to be under, and whether covert or sole, by any deed or deeds, writing or writings, with or without power of revocation and new appointment, to be by her sealed and delivered in the presence of and attested by two or more credible witnesses, or by her last will and testament in writing, or any codicil or codicils thereto, or any writing purporting to be in the nature of her last will and testament, or codicil, to be by her signed and published in the presence of and attested by three or more credible witnesses, direct, limit, and appoint; And in default of, and in the meantime until such direction, limitation, or appointment, [and in case any such shall be made, *Then*, when and as the estates and interests thereby created or raised or limited shall respectively end and determine, and as to such part or parts of the said last-mentioned hereditaments whereof no such direction, limitation, or appointment shall be made], *To the use* of the said [*intended wife*], her heirs and assigns for ever (*h*). *Provided always*, and

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ON MARRIAGE.**

And as to the estates of the intended wife, to the use of such person or persons as she shall by deed or will appoint.

In default of appointment, to the intended wife in fee.

Power for the

(*g*) The ultimate remainder is here framed on the principle adverted to *ante*, p. 139, namely, that of restoring the property, on the failure of the primary objects of the settlement, to its original owners. This principle, indeed, in regard to the property of the intended wife, applies more unexceptionably to a settlement of the real estate than of personalty, because the former does not, like the latter, in the absence of any intercepting disposition, vest absolutely in the husband, who therefore cannot urge, as he plausibly may in relation to personalty, that when the settlement has answered or been disappointed in its immediate purposes, his marital ownership should be allowed to take effect.

As to the ultimate limitation.

(*h*) Here, it will be observed, there is no provision for maintenance during minority; with which, indeed, the limitations of the settlement seem to be incompatible, as they make the children, immediately on their

As to maintenance during minority.

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ON MARRIAGE.**

husband and wife, during their lives successively, to grant leases.

Power for trustees, with consent of husband and wife, or of the survivor of them, to sell or exchange.

it is hereby declared and agreed, that it shall be lawful for the said [*intended husband*], from time to time during his life, and for the said [*intended wife*], his intended wife, from time to time during her life, in case she shall survive him, by indenture or indentures under his or her hand and seal, to demise or lease the said — and hereditaments hereinbefore expressed to be hereby granted and released, or any part thereof, to any person or persons whomsoever, for any term or number of years not exceeding twenty-one years in possession, and not in reversion, remainder, or expectancy, so as upon every such lease there be reserved and made payable during the continuance thereof respectively, the best and most improved yearly rent that can be reasonably had or obtained for the same, without taking any sum or sums of money or other thing by way of fine or premium for or in respect of such lease or leases, and so as none of such lessees be made punishable of or for waste, by any express words therein; and so as in every such lease there be contained a condition or clause of re-entry for non-payment of the rent or rents to be thereby respectively reserved, and so as the respective lessees to whom such leases shall be made, duly seal and deliver counterparts thereof. *Provided also*, and it is hereby further declared and agreed by and between the said parties to these presents, that it shall be lawful for the said [*trustees*], and the survivor of them, and his executors or administrators (*i*), at any time or times, with the consent and approbation of the said [*intended husband*] and [*intended wife*], his intended wife, during their joint lives, and, after the decease of either of them, *Then*, with the consent of the survivor of them, during his or her life, (such consent re-

pective births, legal as well as equitable owners in tail; whereas, to render effectual a provision of this nature, it would be requisite that the trustees, who are to apply the rents for the purpose in question, should have an estate, investing them with the legal dominion, or at least a power of entry, *i. e.* that they should be entitled to receive the rents, the application of which is placed under their control.

As to the class of representatives to be made donees.

(*i*) This power may be given indifferently to the heirs or the executors or administrators of the survivor of the donees; the latter is more usual, and seems to be rather more convenient. Where the inheritance is vested in the persons by whom the sale is to be made, the power or direction to sell should of course be so framed as to comprehend the persons to whom the estate would devolve.

spectively to be testified by any writing or writings under their, his, or her hands and seals or hand and seal, attested by two or more credible witnesses) (*j*), absolutely to make sale and dispose of, or to give in exchange for any other freehold hereditaments, to be situate in that part of Great Britain called England, the aforesaid — and hereditaments hereinbefore expressed to be hereby granted and released, or any of them, or any part thereof, to any person or persons whomsoever, and for such price or prices in money, or for such equivalent in lands or hereditaments, as to them the said [*trustees*], or the survivor of them, or his executors or administrators, shall seem meet; And that (*k*), upon payment of the monies arising by sale of all or any part or parts of the said hereditaments, hereby made saleable as aforesaid (*l*), to the said [*trustees*] or the survivor of them, his executors or administrators, the receipts or receipt of them the said [*trustees*], or the survivor of them, his executors or administrators, shall from time to time be a good and sufficient release and discharge to the purchaser or purchasers for the money for which the same hereditaments shall be sold (*m*), or for so much thereof as in such receipt or receipts shall be expressed or acknowledged to be received; And that, after such receipts shall be given, such purchaser or purchasers (*n*), or his, her, or their heirs, executors, administrators, or assigns, shall not be obliged to see to the application or be answerable or accountable for

FREEHOLDS  
ON MARRIAGE.

The receipt of the trustees to be a sufficient discharge for the purchase-moneys.

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(*j*) It is not usual to vest a discretionary power of sale in the trustees, after the decease of the surviving tenant for life. This requisition of the consent of the tenants for life, or the survivor, necessarily restrains the power within the limits prescribed by the rule of law against perpetuities:

(*k*) This clause may be shortly expressed thus—

“And the receipt or receipts of the said trustees or trustee, for any monies to be received by them or him, in the exercise of this power, shall effectually discharge the person or persons paying the same from all responsibility in respect of the application thereof.”

(*l*) It is usual to add—“or received for equality of exchange.”

(*m*) “or to the person or persons making exchange for the monies received for equality of exchange.”

(*n*) “or person or persons making exchange as aforesaid.”

Shorter form of indemnity to purchasers.

**FREEHOLDS  
ON MARRIAGE.**

Power of revocation and new appointment.

any loss, misapplication, or non-application of the same purchase-money, or any part thereof: *And* that, in order to such sale, disposition, or exchange, it shall be lawful for the said [*trustees*], and the survivor of them, and his executors or administrators, with such consent as aforesaid, to revoke and make void all and singular the uses, trusts, limitations, provisos, declarations, and agreements, in and by these presents limited and declared of and concerning the said hereditaments so sold, disposed of, or given in exchange; *And*, by the same or any other deed or deeds, to limit and appoint the same hereditaments, the uses whereof shall be so revoked, either to such purchaser or purchasers or to the person or persons making such exchange or exchanges, and his, her, or their heirs or assigns, or otherwise to limit or create, declare or appoint, such new or other use or uses, trusts and limitations, of and concerning the same hereditaments, as shall be requisite or shall be deemed expedient for the purpose of carrying into full and complete effect such sale, disposition, or exchange as aforesaid (*o*); subject and without prejudice, nevertheless, to such demises or leases as shall have been made in pursuance of the power in that behalf hereinbefore contained. *Provided also*, and it is hereby further declared and agreed, that, when all or any part of the said — and hereditaments hereby made saleable (*p*) as aforesaid shall be sold (*q*) in pursuance of these presents, all and every the sum or sums of money which shall arise by such sale or sales (*r*) shall, with all convenient speed, be laid out and invested by them the said [*trustees*], or the survivor of them, his executors or administrators, (with such consent as aforesaid, or by and of their or his own proper authority, in case the

The monies arising by sale of the settled estates to be laid out in the purchase of other estates.

As to the power of revocation and new appointment.

(*o*) Every power of sale and exchange which extends to estates vested in persons other than the donees, necessarily operates as a power of revocation and new appointment; and therefore, it is correct to accompany the power by an express authority of this description. No real difficulty, however, is created by the want of such an authority; for, a direction to sell and convey to a purchaser or exchanger, would be considered as conferring it by implication.

(*p*) “or exchangeable.”

(*q*) “or exchanged.”

(*r*) “or which shall be received for equality of exchange as aforesaid.”



persons or person required to give such consent shall then have departed this life), in the purchase of other freehold messuages, lands, or hereditaments, and of copyhold messuages, lands, or hereditaments, which may be contiguous thereto and be convenient to be purchased therewith (if any), (whereof not more than one fourth part in value, in any one purchase, shall be copyhold) in fee-simple in possession, free from incumbrances, except fee-farm or quit-rents and copyhold-rents and services, to be situate, lying, and being in that part of Great Britain called England; *And* that as well the messuages, lands, and hereditaments so to be purchased, as those to be taken in exchange as aforesaid, shall be forthwith settled, conveyed, and assured To such and the same uses, upon and for such and the same trusts, ends, intents, and purposes, and under and subject to such and the same provisoes, declarations, and agreements (including the power of sale and exchange hereinbefore contained), as are in and by these presents limited and declared concerning the hereditaments in lieu whereof such purchases and exchanges shall be respectively made as aforesaid, or as near thereto as the deaths of parties or other contingencies will admit of; *And* it is hereby further declared and agreed by and between the said parties hereto, that, in the meantime, and until the monies arising by such sale or sales (*s*) as aforesaid shall be invested in a purchase or purchases as hereinbefore directed, it shall be lawful for the said [*trustees*], or the survivor of them, his executors or administrators, with such consent or of such proper authority as aforesaid, as the case may require, to lay out and invest such monies in their or his names or name, in or upon the parliamentary stocks or funds of Great Britain, or real securities in England or Wales, at interest, and from time to time, with such consent or of such proper authority as aforesaid, to sell, dispose of, alter, vary, and change such securities or any of them, and those which may be substituted in lieu thereof, for other of the same or the like nature, as often as shall be thought expedient, and the dividends, interest, or annual produce of such parliamentary or real securities, shall from time to time go and be paid and applied to such per-

**FREEHOLDS  
ON MARRIAGE.**

The lands to be purchased and taken in exchange, to be settled to the like uses.

Intermediate trust for investment before re-purchase.

(*s*) "Or which shall be received for equality of exchange."

FREEHOLDS  
ON MARRIAGE.

Covenants by the intended husband and wife respectively, for the title to their respective estates.

—That notwithstanding they have right to convey.

—For quiet enjoyment.

—Free from incumbrances.

son or persons, and for such intents and purposes, and in such manner, as the rents and profits of the lands, tenements, and hereditaments so to be purchased and settled as aforesaid would have gone and been payable and applicable unto, if such purchase or purchases and settlement had been then actually made. (*Add power to appoint new trustees, and indemnity to trustees*, ut ante, p. 131).

AND the said [*intended husband*], for himself, his heirs, executors, and administrators, and the said [*intended wife*], for herself, her heirs, executors, and administrators, do hereby severally and respectively covenant and agree with the said [*trustees*] (*t*) and their heirs, in manner following, (that is to say), that, for and notwithstanding any act, matter, or thing whatsoever by them the said [*intended husband*] and [*intended wife*] respectively done, committed, executed, or suffered to the contrary, they the said [*intended husband*] and [*intended wife*] now have in themselves respectively good right, full power, and lawful and absolute authority, to grant, release, and convey all and singular the said — and hereditaments hereinbefore expressed to be hereby granted and released by them respectively, *To the uses* in the manner aforesaid, according to the true intent and meaning of these presents; *And also*, that for and notwithstanding any such act, deed, matter, or thing as aforesaid, the same — and hereditaments respectively shall and lawfully may, from time to time and at all times hereafter, remain, continue, and be, to, for, and upon the several uses, trusts, ends, intents, and purposes, and under and subject to the several provisoes, limitations, declarations, and agreements hereinbefore limited and declared concerning the same respectively, and shall or may be had, held, and enjoyed, and the rents and profits thereof received and taken accordingly; *And* that free and clear, and freely and clearly acquitted, exonerated, and discharged or otherwise by the said [*intended husband*] and [*intended wife*] respectively, their respective heirs, executors, or administrators, well and sufficiently saved harmless and indemnified of, from, and against all and all manner of former and

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(*t*) The covenant is here made with the trustees, in their character of releasees to uses.

other estates, titles, charges, and incumbrances whatsoever, created, occasioned, executed, or suffered, or to be created, occasioned, executed, or suffered by them the said [*intended husband*] and [*intended wife*] respectively, or their respective heirs, or by any other person or persons lawfully claiming by, from, under, or in trust for them respectively, or by or through the privity, consent, means, default, or procurement of them respectively, (save and except any subsisting leases or tenancies at rack rent); *And further*, that they the said [*intended husband*] and [*intended wife*] respectively, and their respective heirs, and all and every other person and persons lawfully claiming any estate, right, title, trust, or interest, either at law or in equity, of, in, to, or out of the said — and hereditaments hereinbefore expressed to be hereby granted and released, or any part thereof, from, by, under, or in trust for them or any of them respectively, (except the person or persons entitled to the said excepted leases and tenancies respectively), shall and will from time to time, and at all times hereafter, upon every reasonable request, and at the costs and charges of the said [*trustees*], their heirs or assigns, or some or one of them, make, do, acknowledge, levy, suffer, and execute, or cause and procure to be made, done, acknowledged, levied, suffered, or executed, all such lawful acts, deeds, conveyances, and assurances in the law whatsoever, for the further and more effectually granting, releasing, conveying, and assuring all and singular the same — and hereditaments, with the appurtenances, To, for, and upon the several uses, trusts, intents, and purposes, and under and subject to the several provisoes, declarations, and agreements hereinbefore limited and declared concerning the same respectively, or such of them as shall be then subsisting, or otherwise according to the true intent and meaning of these presents, as by them the said [*trustees*], their heirs or assigns, or some or one of them, or their or his counsel learned in the law, shall be reasonably devised or advised and required. IN WITNESS, &c.

—And for further assurance.

FREEHOLDS  
IN STRICT  
SETTLEMENT.

SETTLEMENT (a) (*in Consideration of the Lady's Fortune*) of the FREEHOLD LANDS of th: Intended HUSBAND, to the Use of HIMSELF for LIFE, with Remainder to the ISSUE of the intended Marriage in STRICT SETTLEMENT, charged with an ANNUAL SUM for the intended Wife during the Coverture by way of PIN-MONEY, and afterwards with a JOINTURE-RENT CHARGE in SATISFACTION of DOWER, and also with PORTIONS for YOUNGER CHILDREN; and in relation thereto Provisions for MAINTENANCE and ADVANCEMENT. Usual Clauses respecting partial Appointments and Advancements by the Husband. TERMS are limited to secure Pin-Money, Jointure, and Portions, with Provi-  
soes for CESSER. POWER to the intended HUSBAND to JOINTURE any FUTURE WIFE. POWERS of LEASING, Ordinary and Special. POWER to appoint NEW TRUSTEES, and other usual Provisions. (*Variations containing Powers for granting BUILDING LEASES and DEMISING MINES; Also Power to the Husband to CHARGE the LANDS in favour of the CHILDREN of a FUTURE MARRIAGE*).

Parties.

**THIS** INDENTURE, made the — day of —, BETWEEN [*intended husband*], of &c., esquire, of the first

Remarks on the precedent in the text.

(a) This precedent illustrates the usual manner in which the family estate of an English nobleman or gentleman is settled previously to his marriage. The limitations are to the use of the intended husband for life, with remainder to the first and other sons of the marriage successively in tail, with remainder to the daughters as tenants in common in tail, charged with an annual sum by way of pin-money for the intended wife during the coverture, with a jointure rent-charge during her life in



part; [*intended wife*], of &c., spinster, of the second part; [*trustees to preserve*], of &c., of the third part; [*trustees of pin-money and jointure terms*], of &c., of the fourth part; and [*trustees of portion term*], of &c., of the fifth part: WHEREAS, a marriage is shortly intended to be had and solemnized between the said [*intended husband*] and [*intended wife*]. AND WHEREAS the said [*intended husband*] is seised or entitled in fee-simple of or to the manors, messuages, farms, lands, tenements, and hereditaments herein-after described and expressed to be hereby granted and released; AND WHEREAS the said [*intended wife*] is possessed or entitled of or to the capital sum of 12000*l*. Three Pounds *per centum* Consolidated Annuities, now standing in her own name in the books of the Governor and Company of the Bank of England. AND WHEREAS, upon the treaty

FREEHOLDS  
IN STRICT  
SETTLEMENT.

Reciting intended marriage;

That the husband is seised in fee;

—that the lady is possessed of 12,000*l*. Three Pounds *per centum* Consolidated Bank Annuities.

the event of her surviving the husband, and charged also, in the event of the estate devolving to an eldest or only son, with a gross sum as a provision for the other children. To give effect to these charges, long terms for years are created, which are well adapted to the purpose, because they confer an adequate estate without interfering with the devolution of the freehold and inheritance under the limitations of the settlement. The persons entitled under these limitations may, therefore, notwithstanding the terms, exercise the rights incident to their respective estates. One of the most important of these is the power, which, with the assistance of the tenant for life (*i. e.* the husband), the tenant in tail in remainder (*i. e.* the eldest or only son) has to suffer a common recovery, at any time after he has attained his majority; the fee-simple acquired by this means, being of course subject to the charges (*i. e.* the pin-money, jointure, and portions), which antecedently affected the estate tail. It often happens, that when the eldest or only son is of competent age, the estate is re-settled. If the son is about to marry, limitations for the benefit of himself and the lady and the issue of the intended marriage, in the nature of a strict settlement, are probably created, and thus the estate is tied up for another generation. Sometimes, by a repetition of this process at each successive generation, an estate is continued in a family for centuries, until at length it falls to a less provident owner, who, rejecting the prudent example of his ancestors, resorts to a common recovery, not for the purpose of re-settling the estate, but of raising money on it; and incumbrance then follows incumbrance until they leave the borrower only the nominal ownership of his patrimonial possession; and even this is at length wrested from him by an absolute sale.

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IN STRICT  
SETTLEMENT.**

In considera-  
tion of the said  
12,000*l.* becom-  
ing the absolute  
property of the  
husband, he  
agrees to settle  
pin-money and  
jointure as  
hereinafter  
mentioned.

*Testatum.*

In consideration  
of wife's for-  
tune;

—the husband  
grants lands,  
&c. to trustees;

To hold to trus-  
tees and their  
heirs.

To the use of  
the intended  
husband until  
the marriage;

for the said intended marriage, it was proposed and agreed, that, immediately on the solemnization thereof, the said 12000*l.* Three Pounds *per centum* Consolidated Annuities, to which the said [*intended wife*] is so entitled as aforesaid, should become the absolute property of the said [*intended husband*]; And in consideration thereof, and in order to make a suitable provision for the said [*intended wife*], as well during the life of the said [*intended husband*] by way of pin-money, as after his decease by way of jointure, And also some provision for the issue of the said intended marriage, he the said [*intended husband*] agreed to settle, convey, and assure the said manors and other hereditaments, whereof or whereto he is so seised or entitled as aforesaid, To the several uses, upon and for the several trusts, intents, and purposes, and under and subject to the several powers, provisoes, declarations, and agreements hereinafter expressed and declared concerning the same. NOW THIS INDENTURE WITNESSETH, that, in consideration of the said intended marriage, and of the said sum of 12000*l.* Three Pounds *per centum* Consolidated Annuities, which upon the solemnization thereof are to become the property of the said [*intended husband*] as aforesaid, and in pursuance of the said hereinbefore recited agreement on his part, and also in consideration of the sum of 10*s.* of &c., paid by the said [*trustees to preserve*] to the said [*intended husband*], at or before the sealing and delivery of these presents, the receipt &c. *He* the said [*intended husband*] *Doth* by these presents grant, bargain, sell, and release unto the said [*trustees to preserve*] and their heirs, (in the actual possession, &c.), ALL THAT manor, &c., (*describe parcels*), And all and singular houses, &c., And the reversion, &c., And all the estate, &c. To HAVE AND TO HOLD the said — hereditaments and premises hereinbefore expressed to be hereby granted and released with their appurtenances, unto the said [*trustees to preserve*], and their heirs, for ever, *To the use* of the said [*intended husband*] and his heirs, until the said intended marriage shall be had and solemnized; And immediately after the solemnization thereof, then to the several uses, upon and for the several trusts, intents, and purposes, and with, under, and subject to the several powers, provisoes, declarations, and

agreements hereinafter expressed and declared concerning the same, that is to say, *To the use of the said [trustees of pin-money and jointure terms]*, their executors, administrators, and assigns, for and during and unto the full end and term of ninety-nine years from thence next ensuing and fully to be complete and ended without impeachment for any manner of waste, But nevertheless, *Upon trust* that they the said *[trustees of pin-money and jointure terms]*, and the survivor of them, his executors or administrators, do and shall yearly and every year during the joint lives of the said *[intended husband]* and *[intended wife]*, his intended wife, by and out of the rents and profits of the said — and hereditaments comprised in the said term of ninety-nine years, or by mortgage, sale, or demise thereof, or of any part thereof, for all or any part of the same term, raise and levy the clear yearly sum of 200*l.* of lawful money of Great Britain and Ireland, and do and shall pay, apply, and dispose of the same by four equal quarterly payments on the — day of —, the — day of —, the — day of —, and the — day of — in every year, free and clear of and from all deductions whatsoever in respect of taxes or otherwise, unto such person and persons, and for such intents and purposes as the said *[intended wife]*, notwithstanding her said intended coverture, shall from time to time by any writing or writings under her hand (*b*) direct or appoint; And in default of such direction or appointment, and in the meantime, and from time to time until any such shall be made, then do and shall pay the said clear yearly sum of 200*l.*, or so much thereof concerning which no such direction or appointment shall be made, into the proper hands of her the said *[intended wife]* for her sole and separate use, exclusive of the said *[intended husband]*, her intended husband, and so that the same shall not be subject to his control, debts, contract, or engagements, to be in the nature of pin-money; And the receipt or receipts of the said *[intended wife]*, and of the person or persons whom she shall from time to time direct or appoint to receive all or any part

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SETTLEMENT.

After the marriage to other trustees for ninety-nine years.

Upon trust during the life of the husband to raise by sale or mortgage 200*l.* yearly;

—and apply the same by quarterly payments to the wife's appointment;

—in default thereof to pay it to the wife exclusive of the husband.

Wife's receipts to be a sufficient discharge;

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(*b*) If anticipation is to be restrained, add—"but not by way of anticipation."

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—time of pay-  
ment of the said  
200*l.*;

—and after  
payment, upon  
trust to permit  
the reversioner  
to receive the  
rents;

—proviso, that  
in case there  
shall be more  
than two years'  
pin-money in  
arrear, trustees  
shall not be lia-  
ble for more than  
the two years'  
arrear.

of the said yearly sum of 200*l.*, shall from time to time, notwithstanding her coverture, be a good and effectual release and discharge to the said [*trustees of pin-money and jointure terms*], their executors, administrators, and assigns, for so much thereof as in such receipt or receipts shall be expressed to be received (c), the first quarterly payment of the said yearly sum of 200*l.* to be made on such of the said days of payment as shall first happen after the solemnization of the said intended marriage; and after full payment and discharge of the said yearly sum of 200*l.* as aforesaid, then *Upon trust* that they the said [*trustees of pin-money and jointure terms*], or the survivor of them, his executors or administrators, do and shall permit and suffer the person or persons who shall or may for the time being, by virtue of the limitations hereinafter contained, be entitled to the reversion, freehold, or inheritance of the said manors and hereditaments comprised in the said term of ninety-nine years immediately expectant on the determination of the same term, from time to time to receive and take the rents and profits of the same — and hereditaments for his and their own use and benefit; *Provided always*, and it is hereby declared and agreed, that if at the time of the decease of either of them the said [*intended husband*] and [*intended wife*], or at any time or times during their joint lives, there shall, through the wilful neglect or default of her the said [*intended wife*] or her trustees, be more in arrear of the said yearly sum of 200*l.* than two years' payment thereof, Then and in every such case no further or other sum shall be raised to answer such arrears, than what shall amount in the whole to two years' payment of the said yearly sum of 200*l.*, and the residue of such arrears shall sink into the inheritance of the said — and hereditaments comprised in the said term of ninety-nine years; And the said — and hereditaments, and also the trustees of the said term of ninety-nine years, shall from henceforth be freed, exempted, and discharged

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(c) *Vide* shorter forms of trusts for separate use, *ante*, pp. 123, 184.

As to the wife's  
claim to arrears  
of pin-money.

(d) Where the wife permits her separate income from time to time to be received by her husband, and she is maintained by him, it is considered that she tacitly acquiesces in this mode of its appropriation, and conse-



from the levying, raising, and payment thereof (*d*). *Provided always*, nevertheless, that immediately after the de-

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SETTLEMENT.

Proviso for ces-  
sation of term for  
raising pin-mo-  
ney.

quently she is precluded on her husband's decease from claiming the arrears against his representatives. In this general principle all the cases (with one solitary exception, *Countess of Warwick v. Edwards*, 1 Eq. Ca. Ab. 140, pl. 7) agree, but they differ in regard to the point, whether the wife's claim is wholly excluded, or is merely restricted to an arrear of one year. High names may be cited for each doctrine. Lord *Hardwicke* in more than one instance negated the claim to an account against the husband beyond a year, thereby impliedly affirming the right to it for that period, (*Lord Townsend v. Windham*, 2 Ves. sen. 7; *Peacock v. Monk*, Ib. 190), in which he was followed by Sir *Thomas Sewell* in the case of *Burdon v. Burdon*, at the Rolls, 5th July, 1773, stated 2 Madd. 286, n.: and in the more recent case of *Parkes v. White*, 11 Ves. 225, Lord *Eldon* referred to this as the settled rule, though the case before him did not raise the point.

On the other hand, in the case of *Powell v. Hankey*, 2 P. W. 84, Lord *Macclesfield* laid it down generally, that whether the wife's separate maintenance was to be demanded from the husband himself, or from her own trustees, and whether the allowance was provided out of that estate which was originally the husband's, or out of what was the wife's own estate, the wife's not having demanded it for several years together should be construed a consent from her that the husband should receive it. Again, in the case of *Fowler v. Fowler*, 3 P. W. 354, Lord *Talbot* stated the rule to be, that where pin-money is secured to the wife, and it appears that the husband notwithstanding provides the wife with clothes and other necessities, this, during such time as the wife is so provided for by the husband, will be a bar to *any* demand for her arrears of pin-money. So, in the case of *Squire v. Dean*, 4 B. C. C. 326, Lord *Thurlow* refused to give the wife's representatives an account against the husband's representatives, for dividends arising from money in the funds forming her separate property. A similar doctrine was maintained by Lord *Loughborough* in the case of *Smith v. Lord Camelford*, 2 Ves. jun. 716, but as the husband appears to have been the wife's representative, the point probably was immaterial. Lastly, in the case of *Dalbiac v. Dalbiac*, 16 Ves. 116, Sir *W. Grant* decided, that the account of bygone dividends received by the husband could not be carried back farther than *his death*. Perhaps it may be thought to detract from the weight of the latter class of cases, that in none of them was the point respecting the year expressly adverted to. At the same time, it must be remembered, that in *Dalbiac v. Dalbiac*, the last case occurring on the point, we have a positive determination against the wife, and the only recent opposing authority is Lord

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cease of either of them the said [*intended husband*] and [*intended wife*], and after payment of all arrears of the said clear yearly sum of 200*l.*, (such arrears being limited as aforesaid), and when all and every the trusts hereby declared as aforesaid of and concerning the said term of ninety-nine years, shall in all things be fully performed and satisfied, or by any other ways or means be discharged or become incapable of being performed according to the true intent and meaning of these presents, and when the said [*trustees of pin-money and jointure terms*], and each of them, their and each of their executors, administrators, and assigns, shall be fully reimbursed and satisfied all costs, charges, and expenses occasioned by or relating to the trusts of the said term of ninety-nine years, (and which they are hereby respectively empowered to raise and levy by all or any of the ways and means aforesaid, and to retain accordingly),

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*Eldon's dictum in Parkes v. White*, in which he merely touched upon the doctrine *en passant*. It certainly seems difficult to discover any very solid reason for allowing the year's arrear; and Mr. Maddock, who has industriously collected most of the cases on the point, (2 Madd. 286), with much reason inquires, if the husband is permitted to receive the wife's separate estate and he applies it in the support of the family, why should he be accountable even for one year?

A review of the decisions suggests two observations:—*First*, that the contrariety of opinion as to the actual rule respecting the year's arrear affords the best possible reason for excluding that rule, whatever it be, by an express provision; and *secondly*, that the clause in the precedent in the text, though professing to be restrictive, has a contrary operation, since it authorizes the recovery of a larger arrear of pin-money than is allowed by even the more liberal of the two conflicting doctrines which have been adverted to.

It ought to be mentioned, that a positive agreement between the parties, (without any express provision in the deed creating the trust for separate use), that the husband shall account for pin-money received by him, will entitle the wife to arrears notwithstanding the general rule; and, therefore, where the wife was entitled to 300*l.* a-year pin-money, but for several years before the husband's death received from him 200*l.* only, it being proved that the husband had frequently promised that she should have it at last, Lord *Hardwicke* held, that the surviving wife was entitled to have the arrears raised accordingly. *Ridout v. Lewis*, 1 Atk. 269.

Then and from thenceforth the said term of ninety-nine years of and in the said — and hereditaments comprised in the same term, or so much thereof as shall remain unsold and undisposed of for the purposes aforesaid, shall cease, determine, and be utterly void to all intents and purposes whatsoever, (any thing hereinbefore contained to the contrary thereof in anywise notwithstanding); *And* after the expiration or sooner determination of the said term of ninety-nine years, and in the meantime subject thereto and to the trusts thereof, *To the use* of the said [*intended husband*] and his assigns during the term of his natural life, without impeachment for any manner of waste; and after the determination of that estate by forfeiture or otherwise in his lifetime of the said [*intended husband*], then *To the use* of the said [*trustees to preserve*] and their heirs, during the natural life of the said [*intended husband*], *Upon trust* to support the contingent uses and estates hereinafter limited from being defeated or destroyed, and for that purpose to make entries and bring actions as occasion may require; *But* nevertheless to permit the said [*intended husband*] and his assigns, during his life, to receive the rents and profits of the said — and hereditaments for his and their own use and benefit; And immediately after the decease of the said [*intended husband*], then *To the use, intent, and purpose*, that the said [*intended wife*], his intended wife, and her assigns, in case she shall survive him, shall and may yearly and every year during her natural life have, receive, and take by and out of the rents and profits of the said — and hereditaments hereinbefore expressed to be hereby granted and released, one yearly rent-charge or sum of 800*l.* of lawful money of Great Britain and Ireland, free and clear of and from all taxes, charges, and deductions whatsoever, as well parliamentary as otherwise, for or in respect of any matter, cause, or thing whatsoever, now taxed, charged, or imposed, or hereafter to be taxed, charged, or imposed upon the same — and hereditaments, or upon the said yearly rent-charge or sum of 800*l.*, or upon the said [*intended wife*], or her assigns, in respect thereof, the same yearly rent or sum of 800*l.* to be in full for her jointure, and in lieu, bar, and full satisfaction of and for her dower and thirds at common law, or by custom, freebench, or widow's part, which she can, shall, or may, or otherwise might, have or

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Subject to the term;

—to husband for life *sans* waste, remainder;

—to trustees during the husband's life;

—upon trust to preserve &c.

After the decease of the husband, to pay the wife if she survives the husband a rent-charge of 800*l.*

The same to be in lieu of dower;

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claim of, in, to, or out of all and every or any of the freehold and copyhold or customary lands, tenements, and hereditaments whereof or whereto the said [*intended husband*], her intended husband, at any time during the said intended coverture, shall be seised or entitled for any estate of freehold or copyhold of inheritance, or to which dower or freebench is incident; and to be paid and payable to her the said [*intended wife*] and her assigns, at or in the common dining hall of the Middle Temple, in the city of London, by four equal quarterly payments, between the hours of two and three of the clock in the afternoon of the following days, (that is to say), the — day of —, the — day of —, the — day of —, and the — day of — in every year, the first payment thereof to begin and be made on such of the same days as shall first happen after the decease of the said [*intended husband*]; *And to this further use, intent, and purpose*, that if it shall happen that any quarterly payment of the said yearly rent-charge or sum of 800*l.*, or any part of such quarterly payment, shall happen to be behind and unpaid by the space of fourteen days next over or after any of the said days of payment, whereon the same ought to be paid according to the reservation aforesaid, and the true intent and meaning of these presents, then and in such case and so often as the same shall happen, it shall be lawful for the said [*intended wife*] and her assigns, into and upon the said — and hereditaments hereinbefore expressed to be hereby granted and released, or into and upon any part thereof, to enter and distrain for all arrears of the same yearly rent-charge or sum of 800*l.*, and the distress and distresses then and there found to take, lead, drive, carry away, and impound, and impound to detain and keep, or otherwise to sell and dispose of the same according to the due course of law, until she the said [*intended wife*] and her assigns shall be thereby fully paid and satisfied the said yearly rent-charge or sum of 800*l.*, and all arrears thereof, and all costs and expenses occasioned by the non-payment thereof at the days and times hereinbefore appointed for payment thereof; *And to this further use, intent, and purpose*, that if any quarterly payment of the said yearly rent-charge or sum of 800*l.*, or any part of any such quarterly payment, shall happen to be behind and unpaid by the space of twenty-eight days next over or after any of the

—payable quarterly;

—power of distress;

—power of entry;



aforesaid feasts or days of payment whereon the same ought to be paid as aforesaid, being first legally demanded, then and in such case and so often as the same shall happen, it shall be lawful for the said [*intended wife*] and her assigns, into and upon the said — and hereditaments hereinbefore expressed to be hereby granted and released, or into and upon any part thereof in the name of the whole, to re-enter, and the same to have, hold, and enjoy, and to receive and take the rents and profits thereof for her and their own use and benefit, until she or they shall be thereby or therewith or otherwise fully satisfied and paid all arrears of the said yearly rent-charge or sum of 800*l.*, and also so much of the same yearly rent-charge or sum as shall grow due during such time as the said [*intended wife*] or her assigns, shall continue in possession of the said — and hereditaments or any part thereof after such entry as aforesaid, and also all such costs and expenses as shall be occasioned by the non-payment thereof at the days and times hereinbefore appointed for that purpose; *And* as to the said — and hereditaments (subject to the said yearly rent-charge or sum of 800*l.*, and the remedies hereinbefore reserved for the recovery thereof), immediately after the decease of the said [*intended husband*], *To the use* of the said [*trustees of pin-money and jointure terms*] (e), their executors, administrators, and assigns, for and during and unto the full end and term of one hundred years from thence next ensuing and fully to be complete and ended, without impeachment for any manner of waste, Upon the trusts and for the intents and purposes, and subject to the provisoes, declarations, and agreements herein-after expressed and declared concerning the same term; *And* immediately after the expiration or other sooner determination of the said term of one hundred years, and in the meantime subject thereto and to the trusts thereof, and charged and

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As to the lands  
(subject to the  
rent-charge) to  
trustees, for  
one hundred  
years, *sans*  
waste.

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(e) As the husband's estate for life, and the remainder to trustees for preserving contingent remainders, intervene between the terms of ninety-nine years and one hundred years, respectively limited for securing the pin-money and jointure rent-charge, they of course prevent the possibility of the former of these terms becoming merged in the latter; and therefore the terms may be properly vested in the same trustees.

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SETTLEMENT.

With remainder  
to other trustees,  
for five hundred years.

Remainder to  
the use of the  
first and other  
sons of the marriage  
successively, in tail  
male.

chargeable as aforesaid, *To the use* of the said [*trustees of portion terms*], their executors, administrators, and assigns, for and during the full end and term of five hundred years from thence next ensuing and fully to be complete and ended, without impeachment for any manner of waste, *Upon the trusts* and for the intents and purposes, and under and subject to the provisoes, declarations, and agreements hereinafter expressed and declared concerning the same term; and from and immediately after the end, expiration, or other sooner determination of the said term of five hundred years, and in the meantime subject thereto, and to the trusts thereof, and charged and chargeable as aforesaid, *To the use* of the first son of the body of the said [*intended husband*], on the body of the said [*intended wife*], his intended wife, to be begotten, and of the heirs male of the body of such first son; and for default of such issue, then *To the use* of the second, third, fourth, and all and every other son and sons of the body of the said [*intended husband*], on the body of the said [*intended wife*], his intended wife, to be begotten, severally, successively, and in remainder one after another, as they shall be in seniority of age and priority of birth, and of the several and respective heirs male of the body and bodies of all and every such son and sons, the elder of such sons and the heirs male of his body always to be preferred and to take before the younger of such sons and the heirs male of his and their body and bodies (*f*); And for de-

Remarks upon  
the limitation to  
the issue.

(*f*) A limitation to the first and other sons in tail *male* ought not to be immediately followed by a limitation to the daughters in tail *general*, because it would exclude the female issue of sons, in favour of the issue, as well female as male, of daughters; which is seldom if ever consistent with the intention of the author of a settlement of this nature. To prevent such a consequence, therefore, the limitations to the sons in tail *male* should be, as it here is, followed by a limitation to the sons in tail *general*; which, of course, would fully answer the purpose of letting in the whole line of the sons' descendants, male and female. The reason for not commencing with a limitation to the sons in tail *general* is, that it is wished to prefer the male issue of a younger son to the female issue of an elder son, which obviously is contrary to the course of devolution under an estate tail *general*. The preference of male to female issue is the leading principle of all strict settlements; the variations in which are

fault of such issue, then *To the use* of the first son of the body of the said [*intended husband*] on the body of the

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SETTLEMENT.

Remainder to

principally occasioned by the different degrees in which this principle is allowed to countervail the claim of propinquity of relationship to the person last seised. The point involved in the application of the principle is, whether the settlor, having exhausted the males of a given stock, will let in the females of that stock, or, passing over them, proceed to a more remote stock in search of male objects. Some settlors are content with giving to their own sons precedence over their daughters, making the former tenants in tail general in succession, and the latter tenants in tail general in common. Others carry their preference of males to females a step farther, by inserting, as precursory to the limitation to the sons in tail general, a limitation to the sons in tail male, as in the precedent in the text; others, again, advancing another step, give to the male issue of daughters precedence over the female issue of sons. This, however, is not very common, certainly much less so than the other plan remaining to be noticed, namely, that of limiting the estate, in default or failure of issue of sons of the projected marriage, to the sons of a *future marriage*, in preference to the daughters of the intended marriage. The latter scheme imparts quite a new character to the settlement. In giving to its limitations a reach beyond the objects of the contemplated marriage, it might seem, upon principle, to give rise to a doubt whether the consideration of such marriage would extend to those limitations. The case of *Clayton v. Earl of Wilton*, 6 M. & Selw. 67, however, has decided the affirmative, though certainly the case would be relied on more implicitly for the distinction which has been raised on its authority, (*Vide ante*, Vol. 8, p. 159), if the certificate of the Court of King's Bench had been avowedly rested on that distinction. At all events, the principle of the case clearly has no application where the limitations in favour of the issue of a future marriage are all *ulterior* to the limitations in favour of the issue of the contemplated marriage.

When a marriage settlement contains limitations to the first and other sons of any *future marriage*, it is essential to its consistency and completeness that the trusts for raising portions for younger children should be extended to the children of such marriage, which is not, it seems, invariably done, (*Vide* 2 Sand. Us. 224, 3rd ed.);\* and the consequence is, that, while the eldest or only son of the intended marriage would take the estate charged with portions for younger children, an eldest or only son of any future marriage would take it unincumbered with portions for his brothers and sisters. The limitations of the precedent in the text are

As to extending the limitations to the issue of a future marriage.

\* The Editor is not aware whether this was altered in the subsequent editions of the respectable work here referred to.

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the use of the  
first and other  
sons of the  
marriage, in  
tail general.

To the daughters, as tenants  
in common, in  
tail general,  
with cross remainders.

To the surviving daughter, in  
tail general, remainder

said [*intended wife*], his intended wife, to be begotten, and the heirs of the body of such first son; and for default of such issue, then *To the use* of the second, third, fourth, and all and every other son and sons of the said [*intended husband*] on the body of the said [*intended wife*] to be begotten, severally, successively, and in remainder, one after another, as they and every of them shall be in seniority of age and priority of birth, and of the several and respective heirs of the body and bodies of all and every such son and sons, the elder of such sons and the heirs of his body always to be preferred and to take before the younger of such sons and the heirs of his and their body and bodies; *And* for default of such issue, then *To the use* of all and every the daughter and daughters of the body of the said [*intended husband*] on the body of the said [*intended wife*], his intended wife, to be begotten, equally to be divided between or amongst them, share and share alike, and they to take severally as tenants in common, and of the several and respective heirs of the body and bodies of all and every such daughter and daughters; *And* in case there shall be a failure of issue of the body or bodies of either or any of such daughters, then as to the share or shares, (as well surviving or accruing as original), of any such of them whose issue shall so fail, *To the use* of the survivors or survivor, and others or other of them, equally to be divided between or amongst them, if more than one, share and share alike, and they to take severally as tenants in common, and of the several and respective heirs of the bodies and body of such surviving and other daughters or daughter; and if all such daughters but one shall die without issue, or there shall be but one such daughter, then *To*

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confined, it will be observed, to the objects of the contemplated marriage, with the exception, indeed, of the power to jointure any after-taken wife, which is often, and not improperly, inserted in settlements that do not contain limitations embracing the issue of any future marriage. Such a power, however, sometimes is accompanied by a power enabling the husband to charge the estate with a sum of money for the benefit of the children of a future marriage, of which a form is given in a subsequent note. Both this power and the power to jointure, it will be observed, are subject to the trust for raising the portions of the younger children of the intended marriage.



*the use* of such one or only daughter, and the heirs of her body; and for default of such issue, then *To the use* of the said [*intended husband*], his heirs and assigns, for ever. *And as to, for, and concerning* the said term of one hundred years hereinbefore limited to the said [*trustees of pin-money and jointure terms*], their executors, administrators, and assigns as aforesaid, It is hereby declared and agreed by and between all the said parties hereto, that the same is so limited to them, *Upon the trusts*, and for the intents and purposes, and subject to the provisoes, declarations, and agreements hereinafter expressed and declared concerning the same, (that is to say), *Upon trust* to permit and suffer the person and persons for the time being entitled under and by virtue of the limitations hereinbefore contained, to the reversion, freehold, or inheritance of the said — and hereditaments hereinbefore expressed to be hereby granted and released, immediately expectant on the determination of the said term, to receive and take the rents and profits of the same hereditaments for his and their own use and benefit, until default shall happen to be made in payment of the said yearly rent-charge of 800*l.*, or some part thereof, at the days and times hereinbefore limited and appointed for the payment thereof; *And upon this further trust*, that if the said yearly rent-charge or sum of 800*l.*, or any part thereof, shall be behind and unpaid by the space of forty days next over or after any or either of the said quarterly days of payment whereon the same is appointed to be paid as aforesaid, being first lawfully demanded, *Then* and in such case, and so often as the same shall happen, they the said [*trustees of pin-money and jointure terms*], or the survivor of them, his executors or administrators, do and shall, from time to time, by and out of the rents and profits of the said — and hereditaments comprised in the said term of one hundred years, or by demising, leasing, or mortgaging (*g*) the same or any part

to the husband, in fee.

Declaration of trusts of the term of one hundred years.

In trust to permit the person entitled to the inheritance to receive the rents, until default in payment of the jointure rent-charge.

In default of payment, In trust, by sale or mortgage, to raise the arrears.

(*g*) The trusts of terms for raising sums of money, whether annual or in gross, are usually so framed as to admit of the monies being raised, not merely by the perception of the annual profits, but by way of anticipation, *i. e.* by mortgage or sale; although, in the case of an annual charge, if the income be more than adequate to bear it, there is little or no probability of any use being made of such power, or if it be used on

Remarks on the trusts for raising the jointure rent-charge.

FREEHOLDS  
IN STRICT  
SETTLEMENT.

With costs.

thereof for all or any of the same term, or by such other ways and means as by them the said trustees or trustee respectively shall seem meet, raise and levy such sum and sums of money as shall be sufficient, from time to time, to answer, pay, and satisfy the said yearly rent or sum of 800*l.*, or so much thereof as shall, from time to time, happen to be in arrear and unpaid; together also with all such costs and expenses as the said [*intended wife*] or her assigns, or the said [*trustees of pin-money and jointure terms*], or the survivor of them, his executors or administrators, shall or may sustain or be put unto by reason or means of the non-payment of the said yearly rent-charge or sum of 800*l.*, or any part thereof, at the days and times and in the manner hereinbefore appointed for the payment thereof; and do and

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account of the vacancy of the possession, or other such cause, subsequent rents will be applied in liquidation of the incumbrance so created. On this account, terms for raising annual sums determinable with life seldom exceed one hundred years—a period of duration just sufficient to cover the most protracted term of human existence, but not, it is obvious, long enough for raising a large sum on the inheritance; while terms for raising gross sums are generally five hundred or one thousand years—sufficient, in fact, to comprise the whole beneficial interest in the inheritance, to which they often bear no inconsiderable proportion.

The reader will perceive, by the precedent in the text, the different mode adopted in limiting the annual pin-money and the annual jointure; the former being leviable for the benefit of a *feme covert*, (who is incapable of being the independent owner of a legal rent-charge), is simply directed to be raised by the trustees, and paid to the *cestui que trust*, for her separate use; while, on the other hand, the jointure rent-charge being to arise when the disability of coverture has ceased, is limited to herself, with the usual powers of distress and entry. Armed with these powers, the jointress would have no occasion to resort to the proprietary rights resulting from her trustees' ownership under the term, unless the exercise of the powers of distress and entry were impeded by any pre-existing lease, or were neutralised in effect by the non-occupation of the property; in which case, the limitation of the term, operating as a grant of the immediate reversion in the land itself, would entitle the termors to the rent reserved by the lease, or to let the property if vacant, which the powers in question would not do; for it is to be observed, that even a power of entry authorizes the letting of the land only so long as the annuity continues in arrear. For this reason, it is now an invariable, and seems, in general, to be a proper precaution to accompany every rent-charge with the limitation of a term for securing it.

shall pay, apply, and dispose of the monies so to be raised accordingly; *And upon further trust* to permit and suffer the person or persons who shall or may, for the time being, by virtue of the limitations hereinbefore contained, be entitled to the reversion, freehold, or inheritance of the said — and hereditaments expectant on the determination of the said term of one hundred years, to receive and take the residue and surplus of the rents and profits of the same hereditaments, over and above so much thereof as shall be sufficient, from time to time, to answer, pay, and satisfy the said yearly rent-charge or sum of 800*l.*, and all arrears thereof, and all costs and expenses attending the execution of the aforesaid trusts, for his and their own use and benefit. *Provided always*, and it is hereby declared and agreed by and between the said parties hereto, that, from and immediately after the decease of the said [*intended wife*], and the payment of all arrears which shall be then due of the said yearly rent-charge or sum of 800*l.* (if any such shall be), together with all costs and expenses attending the execution of the trusts aforesaid, *Then* and from thenceforth, the said term of one hundred years, of and in the said hereditaments and premises therein comprised, or so much thereof as shall not be sold or disposed of for the purposes aforesaid, shall cease, determine, and be absolutely void, to all intents and purposes whatsoever, any thing hereinbefore contained to the contrary thereof in anywise notwithstanding; *And as to, for, and concerning* the said term of five hundred years, hereinbefore limited to the said [*trustees of portion term*], their executors, administrators, and assigns, as aforesaid, it is hereby declared and agreed by and between the said parties to these presents, That the same is so limited to them, *Upon the trusts*, and for the intents and purposes, and subject to the provisoes, declarations, and agreements hereinafter expressed and declared concerning the same, (that is to say), *In case* there shall be issue of the body of the said [*intended husband*], on the body of the said [*intended wife*], his intended wife, to be begotten, an eldest or only son, and also one or more other child or children, whether born in the lifetime of the said [*intended husband*] or after his decease, *Then upon trust* that they the said [*trustees of portion term*], or the survivor of them, his executors or administra-

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IN STRICT  
SETTLEMENT.**

Subject thereto, in trust to permit the persons next in remainder to receive the rents.

Proviso for ceaser of the term of one hundred years.

Declaration of trusts of the five hundred years' term.

In case there shall be issue of the marriage of any younger child or children,

Power to raise 10,000*l.* for portions for such

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IN STRICT  
SETTLEMENT.

younger chil-  
dren.

Portions subject  
to the joint ap-  
pointment of  
husband and  
wife; and in de-  
fault of their  
joint appoint-  
ment

—as the survi-  
vor shall ap-  
point.

And in default  
of appointment,  
to be equally di-  
vided amongst  
the children.

tors, do and shall, upon the decease of the said [*intended husband*], (but subject and without prejudice to the raising and payment of the said yearly rent-charge or sum of 800*l.*, and to the powers and remedies hereby given and provided for securing and recovering the same as aforesaid), by demise, sale, or mortgage of the said — and hereditaments comprised in the said term of five hundred years, or of a competent part thereof, for all or any part of the same term, or by such other ways and means as they the said [*trustees of portion term*], or the survivor of them, his executors or administrators, shall think fit to raise and levy or borrow and take up at interest (*h*), the sum of 10,000*l.* of lawful money of Great Britain and Ireland, and do and shall pay, apply, and dispose of the same unto or amongst all and every or such one or more of the same children, (other than and except an eldest or only son), at such age or ages, days or times, in such parts, shares, and proportions, and with such sum or sums of money for maintenance in the meantime, and subject to such provisoes and limitations over, (such provisoes and limitations over to be for the benefit of some or one of the same children), in such manner and form as they the said [*intended husband*] and [*intended wife*], his intended wife, at any time or times during their joint lives, by any deed or deeds, writing or writings, with or without power of revocation, to be by them sealed and delivered in the presence of and attested by two or more credible witnesses, or as the survivor of them the said [*intended husband*] and [*intended wife*], at any time or times after the death of the other of them, by any deed or deeds, writing or writings, with or without power of revocation, to be by him or her sealed and delivered in the presence of and attested by two or more credible witnesses, or by his or her last will and testament in writing, or any codicil thereto, or any writing purporting to be, or in the nature of, his or her last will and testament or codicil, to be by him or her signed and published in the presence of and attested by the like number of credible witnesses, shall direct or appoint; And in default of such direction or appointment, Then do and shall pay, apply, and dispose of the said sum of 10,000*l.* unto, or be-

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(*h*) Sometimes the amount fluctuates according to the number of the children, as in subsequent precedents.



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tween, or amongst all such children, (other than and except an eldest or only son), in equal shares; or, if there shall be but one such child other than and except as aforesaid, *Then* the whole to such only child, at the age or time hereinafter mentioned; *And in case* there shall not be any such direction or appointment made, as hereinbefore is mentioned, of and concerning the portion or portions hereby provided for the child or children of the said intended marriage, other than and except an eldest or only son, as aforesaid, then the said portion or portions to belong to and be an interest absolutely vested in such child or children respectively, for whom a portion or portions is or are hereby provided, being a son or sons, at his or their age or respective ages of twenty-one years, or, being a daughter or daughters, at her or their age or respective ages of twenty-one years, or day or respective days of marriage, which shall first happen; *But nevertheless*, to be paid and payable at the respective times hereinafter mentioned, (that is to say), the portion or portions of such child or children respectively, being a son or sons, to be paid to such of them as shall be under the age of twenty-one years at the death of the said [*intended husband*], when and as they shall respectively attain the said age of twenty-one years, and to such of them as shall attain that age in the lifetime of the said [*intended husband*] immediately after his decease, and the portion and portions of such of the said children as shall be a daughter, or daughters, to be paid to such of them as shall be under the age of twenty-one years and unmarried at the time of the death of the said [*intended husband*], when and as she or they shall respectively attain the said age of twenty-one years or be married, which shall first happen, and to such of them as shall attain the said age of twenty-one years or be married in the lifetime of the said [*intended husband*], immediately after his decease (*i*). *Provided always*, and it is hereby agreed and declared between and by the said parties hereto, that in case any appointment shall be made in pursuance of the power hereinbefore contained, which shall only extend to a part or parts of the sum

Portions to be vested in children at twenty-one years, and daughters at twenty-one or day of marriage.

Provision in case of a partial appointment;

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(i) These clauses are remarkable for the explicitness with which the time of payment in the several alternative events is described.

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SETTLEMENT.

Clause of survivorship and accruer.

or sums of money hereby intended for the portion or portions of such child or children as aforesaid, such appointment shall be valid and effectual notwithstanding the non-appointment of the remaining part or parts of such portion or portions; but in that case, any child entitled to a portion or share under such appointment, shall be entitled to no further share of and in the remaining or unappointed part or parts of the monies hereby intended for portions as aforesaid, until he or she shall have brought his or her appointed share into hotch-pot, and shall have accounted for the same accordingly: *Provided also*, and it is hereby declared and agreed by and between the said parties to these presents, that if any such child for whom a portion is hereby intended and provided as aforesaid, being a daughter, shall happen to die under the age of twenty-one years and unmarried; Or, if any such child being a son shall happen to die or become an eldest or only son, and as such shall be entitled to the possession of the rents and profits, or shall be entitled to the first or immediate estate of inheritance in remainder, of and in the said — and hereditaments hereinbefore expressed to be hereby granted and released in virtue of the limitations hereinbefore contained, before he shall attain the age of twenty-one years; *Then* and in such case, and in default of such direction or appointment as aforesaid, the portion or sum of money hereby provided for every such daughter so dying, or every such son so dying or becoming an eldest or only son, and as such being in possession or entitled as aforesaid, (other than what shall or may then have been actually raised, applied, and paid for the advancement of such son or sons as hereinafter is mentioned), shall from time to time go and accrue to the survivors or survivor, and others or other of the said children for whom a portion or portions is or are hereby intended and provided as aforesaid, and shall be equally divided between or amongst such survivors and others of them (if more than one), share and share alike, and the same shall become vested in and be paid and payable to him, her, or them at such respective ages, days, or times, and shall go in the same manner as is hereby directed, provided, and declared touching his, her, or their original portion or portions respectively, and such benefit of survivorship or accruer shall extend as well to the surviving or

accruing as to their original shares; *Provided always*, that no such sale or mortgage as is lastly hereinbefore mentioned shall be made until some or one of the said portions shall become payable by virtue of these presents, unless with the consent of the said [*intended husband*], testified by some writing under his hand and seal: *And upon this further trust*, that they the said [*trustees of portion term*], or the survivor of them, his executors or administrators, do and shall in the meantime, from and after the decease of the said [*intended husband*], until the said portion or portions hereby provided for such child or children as aforesaid shall respectively become payable, (but subject and without prejudice to, and in default of such direction or appointment as aforesaid), by and out of the rents and profits of the said — and hereditaments comprised in the said term of five hundred years, raise and levy for the maintenance and education of the same child or children respectively (*j*), such yearly sum or sums of money as to them the said [*trustees of portion term*], or the survivor of them, his executors or administrators shall seem meet, not exceeding the interest of the same portion or portions respectively, after the rate of *4l. per cent. per annum*, and do and shall apply the same yearly sum or sums so to be raised, or in the discretion of the said trustees or trustee pay the same unto the guardian or guardians of the same child or children, to be by him or

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—portions not to be raised until one becomes payable without the father's consent.

Upon further trusts after the father's death to raise money out of the rents of the estate comprised in the five hundred years for the education of the children;

—not exceeding the interest of the portions at the rate of *4l. per centum per annum*;

(*j*) Sometimes the amount is fixed, subject to augmentation at a certain age, thus:—

“such yearly sum and sums of money as hereinafter mentioned, (that is to say), until such child or children shall respectively attain the age of twelve years, such yearly sum for each of them as will be equivalent to the interest of the portion hereby intended for him or her as aforesaid, after the rate of *2l.* for every *100l.* by the year; and from and after the age of twelve years, and until such portion or respective portions shall become payable, such yearly sum for each such child, as will be equivalent to the interest of the portion hereby intended for him or her as aforesaid, after the rate of *4l.* for every *100l.* by the year, and do and shall apply” &c.

Variation where the maintenance is augmented at a certain age.

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SETTLEMENT.

—half-yearly;

Powers for the  
trustees to ad-  
vance sons to  
the extent of  
half their por-  
tions;<sub>i</sub>

In case the fa-  
ther advances in  
his lifetime, such  
advancement to  
go in total or  
partial satisfac-  
tion of portions.

them applied in, for, or towards the maintenance and education of the same child or children respectively; the said yearly sum or sums for maintenance and education to be paid half-yearly at or upon the twenty-ninth day of September and the twenty-fifth day of March in every year by equal portions, the first payment thereof to be made on such of the said days as shall next happen after the decease of the said [*intended husband*]; *Provided always*, and it is hereby declared and agreed by and between the said parties to these presents, that it shall be lawful for the said [*trustees of portion term*], and the survivor of them, his executors or administrators, at any time after the decease of the said [*intended husband*], (but subject and without prejudice to and in default of any such direction or appointment as aforesaid,) from time to time, by all the ways and means aforesaid, to raise any part of the portion or portions hereby intended and provided for any such child or children as aforesaid, being a son or sons, not exceeding in the whole one half of the portion or portions which such son or sons respectively may then be presumptively entitled to under the trusts aforesaid, and to apply the same for the placing out such son or sons in any profession, business, or employment, or for his or their instruction therein, or for purchasing for him or them a commission in the army, or otherwise for his or their preferment or advancement in the world, notwithstanding his or their portion or portions shall not then have become vested, due, and payable. *Provided also*, that if the said [*intended husband*] shall in his lifetime and out of his own proper money, give and advance to or with any child or children for whom a portion or portions is or are intended to be hereby provided as aforesaid, any sum or sums of money for or towards his, her, or their preferment or advancement in the world as aforesaid, Then and in such case (unless the said [*intended husband*] shall by some writing under his hand direct to the contrary,) such advanced sum or sums of money, if the same shall be equal to the whole of the portion or portions intended to be hereby provided for such child or children respectively as aforesaid, shall be accounted in full satisfaction of the whole of his, her, or their portion or respective portions; but if such advanced sum or sums of money shall be less than such portion or respective portions,



the same shall be considered as part only of his, her, or their portion or respective portions, and such money only shall be raised for the portion or respective portions of the child or children to or with whom such sum or sums of money shall be so given or advanced by the said [*intended husband*] as aforesaid, as, together with the sum or sums of money so to be given or advanced, will amount to or complete the sum or sums of money intended to be hereby provided for such child or children respectively; And the said [*intended husband*], his executors, administrators, or assigns, shall be entitled to stand in the place of such advanced child or children respectively, and to receive the amount of the sum or sums of money so to be advanced by him as aforesaid, and the same shall be considered as part of his personal estate, unless the said [*intended husband*] shall by any writing under his hand direct the contrary. *Provided also*, and it is hereby further declared and agreed by and between the said parties to these presents, that they the said [*trustees of portion term*], or the survivor of them, his executors, administrators, or assigns, do and shall permit and suffer the person or persons who shall or may for the time being be entitled to the reversion or remainder of the said — and hereditaments comprised in the said term of five hundred years, expectant on the determination thereof in the meantime, and until some or one of the said portions hereby directed to be raised as aforesaid shall become due and payable by virtue of the trusts aforesaid, to receive and take for his and their own use and benefit all the residue and surplus of the rents and profits of the same — and hereditaments which shall remain after payment of the said yearly sum or sums of money as is or are hereinbefore directed to be raised and paid for the maintenance and education of such child or children respectively as aforesaid; *Provided also*, and it is hereby further declared and agreed by and between all the said parties to these presents, that when all and every the trusts hereinbefore declared of and concerning the said term of five hundred years shall be fully performed and satisfied, or shall be discharged by becoming either unnecessary or incapable of being performed, and when the said [*trustees of portion term*], and each of them, their and each of their executors, administrators, and assigns shall be fully reim-

FREEHOLDS  
IN STRICT  
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Proviso, (after raising maintenance), for allowing the persons entitled to the freehold to receive the remainder of the rents.

Proviso for cessation of the term of five hundred years.

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IN STRICT  
SETTLEMENT.

Power for the husband to jointure any future wife (without prejudice to the five hundred years' term) with a yearly sum not exceeding 800*l*.

With powers for recovering the same if in arrear.

bursed and satisfied all costs, charges, and expenses created by or relating to the trusts of the said term of five hundred years, (and which they are hereby respectively authorized and empowered to levy and raise by all or any of the ways and means aforesaid, and to retain accordingly), Then and from thenceforth the said term of five hundred years of and in the said hereditaments and premises therein comprised, or so much thereof as shall remain unsold or undisposed of for the purposes aforesaid, shall cease, determine, and be absolutely void to all intents and purposes whatsoever, any thing hereinbefore contained to the contrary thereof in anywise notwithstanding. *Provided always*, and it is hereby further declared and agreed by and between the said parties hereto, that if the said [*intended wife*] shall die in the lifetime of the said [*intended husband*], her intended husband, Then and in such case it shall be lawful for the said [*intended husband*], either before or after his marriage with any woman or women whom he shall marry after the decease of the said [*intended wife*], by any deed or deeds, or writing or writings, with or without power of revocation, to be by him sealed and delivered in the presence of and attested by two or more credible witnesses, (but subject nevertheless and without prejudice to the said term of five hundred years and the trusts thereof), to grant, limit, or appoint unto or to the use of any such woman or women whom he shall so marry, for her or their life or lives, or for her or their jointure or jointures, and in bar or without being in bar of her or their dower, an annual sum or yearly rent-charge not exceeding the sum of 800*l*. tax free and without any deduction whatsoever to be issuing out of and charged and chargeable upon all or any part or parts of the said ——— and hereditaments hereinbefore expressed to be hereby granted and released, with such powers and remedies for recovering such yearly rent-charge when in arrear, and for defraying all costs and expenses occasioned by the non-payment thereof as to him the said [*intended husband*] shall seem meet, and to grant, demise, limit, or appoint all or any of the same ——— and hereditaments to any person or persons, his or their executors, administrators, or assigns, for such term or terms of years, for better securing the due payment thereof, to take effect immediately, or at any time after the death of

him the said [*intended husband*] as to him shall seem meet, so as such term or terms of years be made determinable on the ceasing of the rent-charge thereby secured, and the payment of all arrears thereof, and all costs, charges, and expenses occasioned by the non-payment thereof (*k*). *Pro-* FREEHOLDS  
IN STRICT  
SETTLEMENT.  
Powers of leas-

(*k*) Sometimes the following power is also given to the husband:—

“ *And further*, that it shall be lawful for the said [*intended husband*] by any deed or deeds, instrument or instruments in writing, with or without power of revocation and new appointment to be by him sealed and delivered and attested as aforesaid, or by his last will and testament in writing to be signed and published by him in the presence of and attested by two or more credible witnesses, (but subject and without prejudice to the said term of five hundred years and the trusts thereof), to subject and charge all or any of the said ——— and hereditaments to and with the payment of any sum or sums of money for the portion or portions of the child or children of the said [*intended husband*], on the body of any wife or wives whom he shall happen to marry after the decease of the said [*intended wife*], not exceeding in the whole the sum of ——— pounds of lawful money of Great Britain and Ireland, with interest for the same at any rate not exceeding 4*l.* for every 100*l.* by the year, to be paid or shared and divided between or among the child or children respectively for whom the same shall be provided, at such age or respective ages, days, or times, and if more than one, in such parts, shares, and proportions, and charged with such annual sum or sums of money, conditions, restrictions, and limitations over, such annual sums and limitations over being for the benefit of one or more such child or children respectively as the said [*intended husband*] shall direct or appoint; And that, for the purpose of raising such sum or sums not exceeding the said sum of ——— pounds, and interest for the same as aforesaid, it shall be lawful for the said [*intended husband*], by the same or any other deed or deeds, instrument or instruments in writing, so sealed, delivered, and attested as aforesaid, or by such his last will and testament in writing, or any codicil or codicils, so signed, published, and attested as aforesaid, but subject and without prejudice as lastly

Power to charge for the portions of children of a subsequent marriage.

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IN STRICT  
SETTLEMENT.

ing for three  
lives.

*vided also*, and it is hereby further declared and agreed by and between all the said parties to these presents, That it shall be lawful for the said [*intended husband*] at any time or times during his life (*l*), by any indenture or indentures under his hand and seal, to demise and lease such part or parts of the said — and hereditaments hereinbefore expressed to be hereby granted and released, as are now or have been usually demised or leased for one or more life or lives, or years determinable on the dropping of one or more life or lives, unto any person or persons whomsoever, for one, two, or three life or lives, or for any term or number of years determinable on the death or deaths of one, two, or three person or persons, either in possession or reversion, so as that there shall not be more than three lives in being at most upon any part of the said hereditaments so to be demised or leased at any one time; *And* so as the lessee or lessees to be named in such lease or leases, and his, her, or their heirs, executors, administrators, or assigns, or any of them be not made dispunishable of or for any waste by any express words therein, and so as upon every such lease the usual and accustomed rents, heriots, and services at least, or proportional rents, heriots, and services, where a greater or less part of any farm or farms, tenement or tenements shall be leased either separately or together with any other part or parcel of the said hereditaments or other lands, be

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hereinbefore is mentioned, to limit or appoint all or any part of the hereditaments so to be charged as aforesaid to any person or persons whomsoever, for any term or number of years, without impeachment of waste."

(*l*) Often the power is extended to the trustees during the minority of any child of the marriage, thus:—

Extension of  
the power of  
leasing to trus-  
tees.

"And also for the said [*trustees*], and the survivor of them, his executors or administrators from time to time, and at all times during the minority of any child or children of the said intended marriage, who by virtue of the limitations hereinbefore contained shall be actually entitled to the possession or the receipt of the rents and profits of the said — and hereditaments."



reserved and made payable during the continuance thereof, such rents to be incident and go along with the reversion expectant on the same leases respectively, and so as in every such lease there be contained a clause of re-entry for the non-payment of the rent or rents to be thereby reserved by the space of twenty days after any part thereof shall become due and so as the respective lessees to be named in such leases duly execute counterparts thereof respectively; *And also* to demise or lease any part or parts of the same — and hereditaments to any person or persons for any term or number of years absolute not exceeding twenty-one years in possession, but not in reversion, remainder, or expectancy by way of future interest, so as upon every such last-mentioned lease there be reserved and made payable during the continuance thereof, to be incident and go along with the reversion expectant thereon respectively, the best and most improved yearly rent or rents that can be reasonably had or obtained for the same without taking any sum or sums of money or thing by way of fine or premium for or in respect of the same lease or leases, and so as the lessees to be named in such leases respectively, and their executors, administrators, or assigns be not made punishable of or for waste by any express words therein contained; *And* so as in every such lease there be contained a condition of re-entry for non-payment of the rent or rents to be thereby respectively reserved, and so as the respective lessees to whom such leases shall be made, duly seal and deliver counterparts thereof respectively (m). (*Add powers of sale and exchange* (n),

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IN STRICT  
SETTLEMENT.

Ordinary power  
to lease for  
twenty-one  
years.

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(m) The following form of powers to grant repairing and building leases, and also to grant leases of mines may be found useful—

“*And also*, by indenture or indentures to be sealed, delivered, and attested as aforesaid, to demise or lease all or any part of the said hereditaments situate and being in or near the town of —, unto any person or persons who shall be willing to take the same for the purpose of effectually re-

Powers to grant  
repairing and  
building leases.

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(n) This power is generally given to the trustees for preserving contingent remainders; or rather the persons intrusted with this power are made trustees to preserve, in order to avoid increasing the number of parties.

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SETTLEMENT.

*with the accompanying trusts and authorities, ut ante, p. 206. Provided also, and it is hereby further declared and agreed*

pairing the premises so to be demised or leased, or for the purpose of rebuilding or of erecting new buildings upon the premises which shall be so leased or any part thereof, with liberty to take or pull down any erection or building then standing or being upon the premises so to be demised or leased for the purpose of rebuilding as aforesaid, or any part thereof, and to make use of the materials, and also liberty to lay out and appropriate any part or parts of the ground which shall be thereby demised as or for a yard or garden, or for any other convenience, to be held, occupied, or enjoyed with any such building; so that every such demise, grant, or lease for the purpose of new building or rebuilding be made for any term or number of years not exceeding the term of sixty years; and so that every such demise or lease for the purpose of effectually repairing any messuage or tenement and premises, be made for any term or number of years not exceeding the term of forty-one years; And so from time to time, and in like manner to demise or grant new leases for rebuilding or repairing the same premises or any part thereof, for such terms and interests respectively as aforesaid; so that every such demise or lease shall take effect in possession, and not in reversion or by way of future interest; and so that upon every such demise or lease to be made in pursuance of this power, there be reserved to be paid and payable half-yearly or oftener during the continuance thereof, and to be incident to and go along with the immediate remainder or reversion expectant on the determination thereof, the best and most beneficial rent and rents that at the time of granting thereof (considering the nature of the case) can be reasonably had and obtained for the same premises, except that if it shall be deemed expedient a nominal rent may be reserved during the first year or years of the said term in the usual manner of building leases; and so that in every such lease or grant a condition of re-entry be reserved in case of non-payment of the rent or rents thereby to be reserved by the space of twenty-one days next after any part thereof shall become due; and so that the

by and between the said parties to these presents, that, if the said several trustees hereby nominated and appointed, or

FREEHOLDS  
IN STRICT  
SETTLEMENT.

lessee or lessees to be named in each such lease seal and deliver a counterpart thereof: *And further*, that it shall be lawful for the said [*intended husband*] during his life, and after his decease for the said [*trustees*], and the survivor of them, and his executors or administrators, from time to time, and at all times during the minority of any child of the said intended marriage, who, by virtue of or under any of the limitations hereinbefore contained, shall for the time being be in the actual possession or entitled to the receipt of the rents and profits of the said — and hereditaments hereby released, or expressed or intended so to be, by indenture or indentures to be sealed and delivered by him or them respectively, in the presence of and attested by two or more credible witnesses, to lease or demise all, every, or any of the mines, layers, veins, seams, and strata of freestone, lead, clay, sand, ironstone, and other minerals or substances found and discovered, or which shall or may, at any time or times hereafter, be opened, found, or discovered, in, under, or upon the said — and hereditaments hereby released, or expressed and intended so to be, unto any person or persons, for any term or number of years not exceeding thirty-one years, to take effect in possession and not in reversion, or by way of future interest, and to grant to any such lessee or lessees, or to any person or persons whomsoever, for any term or number of years not exceeding thirty-one years, to take effect in possession and not in reversion or by way of future interest, full and free liberty, licence, power, and authority, to search, seek, dig, drive, win, work, and make groves, shafts, drifts, trenches, sluices, way-gates, water-gates, and water-courses, and to erect any furnace or furnaces, engines, mills, or gins, and to use all other lawful ways and means as well for the finding, discovering, winning, working, and getting the said freestone, lead, clay, sand, ironstone, and other minerals and substances, from and out of the said mines and quarries, as for avoiding and carrying away water, foul air, or stench, from, forth, and out of the same, and sufficient ground-room, heap-room, and pit-room, for laying, placing, and manufactur-

Power to lease  
mines.

any of them, their, or any of their heirs, executors, or administrators, or any future trustee or trustees to be appointed

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ing of the iron, lead, ironstone, earth, rubbish, and other substances that shall from time to time proceed from or be wrought, dug, or gotten out of the same; And to grant to such lessee or lessees, or other person or persons as aforesaid, full and sufficient way and passage to and for them respectively, and their respective agents, workmen, or servants, from time to time during the continuance of the term and terms of years to be by such lease or grant, leases or grants respectively, granted or created, to take, lead, and carry away, with horses, carts, wains, waggons, and other carriages, all the said freestone, lead, clay, sand, ironstone, minerals, and other substances, to be wrought, won, and gotten forth and out of the said mines and quarries thereby to be demised or leased or so to be opened or worked as aforesaid; And also, full and free liberty, licence, power, and authority, to erect, build, and set up, in any convenient place or places near any of the said mines and quarries so to be demised and leased, or so to be opened and worked as aforesaid, all such houses, hovels, lodges, sheds, or other buildings, as shall from time to time be needful or convenient for standing, laying, and placing of workmen, workhouses, work-gear, and utensils to be used or employed in or about the working and carrying on of the works of the said mines and quarries respectively; And to dig and get up stone, sods, peat, clay, or spar, for making, building, or repairing such houses or other buildings, and to do whatever else shall be needful or requisite for, in, or about the working, obtaining, getting, washing, cleansing, and smelting of iron, ironstone and other minerals and substances, forth and out of the said mines and quarries, and for the manufacturing and carrying away the same; So as by such demises, leases, or grants, there be respectively reserved and made payable, during the continuance of the term or terms of years to be thereby respectively created, the best and most improved rent or rents or sum or sums of money, tolls, duties, royalties, and reservations, that can be reasonably had or gotten for the same; And so as such demises, leases, or grants so to be made as aforesaid, be made with-



in the place or stead of any of them, as hereinafter is mentioned, shall happen to die, or be desirous to be discharged from or become incapable to act in the trusts, powers, and authorities hereby created, at any time before the same shall be fully executed and performed, or be discharged, then and in such case, and so often as the same shall happen, it shall be lawful for the said [*intended husband*], his executors and assigns (*o*), with the consent in writing, nevertheless, of the

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out taking any fine, premium, or foregift for the same; And so as in every such demise, lease, or grant so to be made, there be contained a condition or power of re-entry, or a power to make void and determine the same, for non-payment of the rent or rents, sum or sums of money, tolls, duties, royalties, or reservations thereby respectively to be reserved or made payable; And so as the respective lessees or grantees do execute counterparts of all such demises, leases, or grants as shall be made to them respectively, and do enter into such covenants and agreements for the working and managing of the said mines and works, as the person or persons making such leases or grants respectively shall judge expedient, and for rendering and paying the rent or rents, sum or sums of money, tolls, duties, royalties, and reservations thereby to be made payable.”

(*o*) The nature of the trusts determines, in whom the power of appointing new trustees may with propriety be vested; for the person in whom the beneficial interest mainly resides is evidently the most proper to be intrusted with the exercise of this most important power. In the present instance, it will be perceived, the power is restricted to the husband and his personal representatives, (with the concurrence of the wife during her life), and is not, after the husband's decease, extended, as in former precedents, to the trustees themselves. It appears to be not quite a matter of course to empower the trustees to supply, by their own nomination, vacancies in the office in *any* event; and unquestionably it ought never to be done while any person beneficially interested is competent to exercise the power. When the trustees are so empowered, a subordinate question is—whether the power shall be vested in the surviving or continuing trustee, or in the retiring, or the representatives of the deceased, trustee. On behalf of the surviving or continuing trustee it may be reasonably urged, that he should have some share in the nomination of one who is to be his coadjutor in the trust; while, on the other hand, it does

Remark on the power of appointing new trustees.

FREEHOLDS  
IN STRICT  
SETTLEMENT.

said [*intended wife*], his intended wife, during her life, and, after her decease, of his or their own proper authority, by any writing or writings under his or their hand and seal or hands and seals, attested by two or more credible witnesses, from time to time to nominate, substitute, or appoint any other fit person or persons to be a trustee or trustees, in the stead or place of the trustee or trustees so dying, or desiring to be discharged from or becoming incapable to act in the trusts, powers, and authorities as aforesaid; and that, when and so often as any new trustee or trustees shall be nominated, substituted, or appointed as aforesaid, All and singular the said — and hereditaments hereinbefore expressed to be hereby granted and released, or such part thereof as shall not have been sold or conveyed in exchange in pursuance of the powers in that behalf hereinbefore contained, and also all other the trust estates and premises whatsoever for the time being, shall thereupon, with all convenient speed, be conveyed, assigned, transferred, and assured by the trustee or trustees thereof for the time being, who are and is hereby fully authorized and empowered in that behalf, so and in such sort, manner, and form as that the same shall and may be legally and effectually vested in the surviving or continuing trustee or trustees of the same trust estates (*p*) and premises respectively, and such new trustee or trustees, jointly or wholly in such new trustee or trustees, as the case may require, To, for, and upon such and the same uses, trusts, intents, and purposes, and with, under, and subject to such and the same powers, provisoes, declarations, and

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not seem quite right to enable him to fill the trust with his own nominees. Perhaps the best mode of meeting the difficulty is to give the power to both the retiring and continuing trustees, or such of them as shall think proper to exercise it, (*ut ante*, p. 131); but this is a less eligible plan when the power relates to land, than when it affects personalty only; because, in deducing the title through the newly appointed trustees, it would be necessary to prove that all the non-concurring donees, who had the option of joining in the nomination, had declined to do so.

(*p*) This precedent exhibits the slight variation in the power of appointing new trustees occasioned by there being several distinct classes of trustees.

agreements as are hereinbefore limited, expressed, and declared of and concerning the same trust estates and premises, or to, for, upon, and subject to such and so many of them as shall be then existing undetermined and capable of taking effect; and that all and every such new trustee or trustees shall and may in all things act in the management, carrying on, and execution of the trust to which he, she (*q*), or they shall be so appointed, either alone or in conjunction with the surviving or continuing trustee or trustees of the same estates and premises, as the case may require, as fully and effectually, and shall have and be invested with such and the same powers and authorities, to all intents and purposes whatsoever, as if he or they had been originally in and by these presents nominated and appointed a trustee or trustees, and as the trustee or trustees, in whose stead or place he, she, or they shall respectively come or succeed, is or are enabled to do or exercise, or could or might have done or exercised by virtue of these presents if then living and continuing in the trusts as aforesaid, and not in any other manner, (any thing hereinbefore contained to the contrary thereof in anywise notwithstanding). (*Usual indemnities to trustees, and covenants for title by the husband*, ut ante, p. 210). IN WITNESS, &c.

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(*q*) It seems probable (though the Editor, having known a doubt raised on the point, has here guarded against it), that the use of the pronouns applicable to males only would be ascribed to the fact of their being commonly selected to fill the office of trustee, rather than to a design to exclude the nomination of persons of the other sex.

APPOINTMENT  
AND RELEASE  
UPON  
MARRIAGE.

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APPOINTMENT *and* RELEASE *in Fee*, limiting to the INTENDED HUSBAND a RENT-CHARGE during the JOINT LIVES of himself and HIS FATHER, and subject thereto; the Lands to the FATHER for LIFE, with Remainder to the INTENDED HUSBAND FOR LIFE, with Remainder, (subject to a RENT-CHARGE, to the INTENDED WIFE, in Bar of Dower), to the CHILDREN of the Marriage, EQUALLY IN FEE, with CROSS LIMITATIONS over, in case of Death under Twenty-one, and dying without Issue; and in default of any Child attaining Twenty-one, or dying under age without leaving Issue, (CHARGED with FIVE THOUSAND POUNDS, to be disposed of by the INTENDED WIFE), To the FATHER in FEE; Trusts of Terms for securing the Rent-charges and raising the Sum to be appointed by the Wife. (Variation where the Trusts of the Jointure Term are extended to the authorizing the Application of the Rents of Shares in the Inheritance to the Maintenance of Children, during Minority).

Parties.

THIS INDENTURE, made the — day of —, BETWEEN [*father*], of &c., of the first part; [*intended husband*], of &c., (the eldest son of the said [*father*]), of the second part; [*intended wife*], of &c., spinster, of the third part; [*trustees to preserve contingent remainders*] (a), of &c., of the fourth part; [*trustees of term for two hundred years, for securing rents charge and maintenance for children*] of &c., of the fifth part; and [*trustees of term for six hundred years, for raising sum to be appointed, in a certain*

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(a) These trustees are referred to throughout the precedent as trustees simply without any additional designation.



*event, by the wife*], of &c., of the sixth part. WHEREAS, by indentures of lease and release, bearing date respectively the — and — days of —, 18—, the release being made between the said [*father*], of the first part, the said [*intended husband*], of the second part, [*tenant*], of &c., of the third part, and [*demandant*], of &c., of the fourth part; and by virtue of a common recovery, duly suffered in — term, in the — year of the reign of his present Majesty, in pursuance of an agreement in the said indenture of release contained, *All those (parcels)*, with the appurtenances, were assured and now stand limited To the use of such person or persons, for such estate or estates, interests, ends, intents, and purposes, and with, under, and subject to such powers, provisoes, limitations, declarations, and agreements, and in such manner and form as the said [*father*] and [*intended husband*] from time to time, or at any time or times, by any deed or deeds, instrument or instruments in writing, with or without power of revocation and new appointment, to be by them sealed and delivered in the presence of and attested by two or more credible witnesses, shall jointly direct, limit, or appoint; and in default of such joint direction, limitation, or appointment, to the use of the said [*father*], during the term of his natural life, without impeachment of waste, with remainder To the use of the said [*intended husband*], his heirs and assigns for ever (*b*). AND WHEREAS a marriage is intended to be shortly solemnized between the said [*intended husband*] and [*intended wife*]; and upon the treaty for the said intended marriage, the said [*father*] and [*intended husband*] did propose and agree, that, in consideration of the marriage portion to be received by the said [*intended husband*] with the said [*intended wife*], as hereinafter mentioned, the said — and hereditaments should be conveyed and assured to, for, and upon the uses, trusts, intents, and purposes, and subject to the provisoes, declarations, and agreements hereinafter declared concerning the same. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said recited agreement, and in consideration of the said intended

APPOINTMENT  
AND RELEASE  
UPON  
MARRIAGE.

Indentures of  
lease and re-  
lease recited.

The intended  
marriage.

And the agree-  
ment for a set-  
tlement.

Testatum.

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(*b*) If these deeds are left in the custody of the father or son, a memorandum of the present settlement should be indorsed on one of them.

APPOINTMENT  
AND RELEASE  
UPON  
MARRIAGE.

The intended husband and his father jointly appoint the lands to the uses after declared.

Further *testamentum*.

Intended husband and his father respectively grant the premises.

And all the estate.

marriage, and also in consideration of the sum of 5000*l.* of lawful money of Great Britain and Ireland, paid by the said [*intended wife's father*], of &c., the father of the said [*intended wife*], to the said [*intended husband*], at or immediately before the execution of these presents, as and for the marriage portion of the said [*intended wife*], they the said [*father*] and [*intended husband*], in pursuance of the power or authority to them reserved by the hereinbefore recited indenture of release as aforesaid, and by virtue of every other power and authority them in anywise enabling in this behalf, Do by this deed or instrument in writing, by them sealed and delivered in the presence of, and attested by two credible witnesses, direct, limit, and appoint, that the said — hereditaments and premises comprised in the said indentures of lease and release, and hereinbefore described, with their and every of their appurtenances, shall henceforth remain and be, and that the said indenture of release of the — day of —, and the said common recovery thereupon suffered, and the full force and effect of the same respectively, shall operate, be, and enure, and that the said [*demandant*] (the demandant in the said recovery named), and his heirs, shall stand and be seised of the said hereditaments and premises, To, for, and upon the uses, trusts, intents, and purposes, and subject to the provisoes, declarations, and agreements hereinafter expressed concerning the same. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said recited agreement, and for the considerations aforesaid, and also in consideration (*nominal pecuniary consideration*), They the said [*father*] and [*intended husband*] Do, and each of them Doth, by these presents, grant, bargain, sell, release, and confirm unto the said [*trustees*] and their heirs, (in the actual possession of the said [*trustees*] now being, by virtue of a bargain and sale to them thereof made by the said [*father*], in consideration &c.) All and singular the said —, hereditaments, and premises hereinbefore described, with their and every of their appurtenances; And the reversion and reversions, remainder and remainders, yearly and other rents and profits thereof; And all the estate, right, title, interest, trust, property, claim, and demand whatsoever, of them the said [*father*] and [*intended husband*] respectively, in, to, and out of the same pre-

mises; To HAVE AND TO HOLD the said — and hereditaments hereby granted and released, or intended so to be, with their appurtenances, unto the said [*trustees*] and their heirs for ever; nevertheless, to, for, and upon the uses, trusts, intents, and purposes, and subject to the provisoes, declarations, and agreements hereinafter declared concerning the same, (that is to say); Until the said intended marriage shall be solemnized, to such uses, upon and for such trusts, intents, and purposes, and subject to such powers and limitations as the said — and hereditaments, at the time of or immediately before the execution of these presents, were or stood limited and subject to: And from and after the solemnization of the said intended marriage, *To the use, intent, and purpose*, that the said [*intended husband*] and his assigns shall and may, during the joint lives of himself and the said [*father*], by and out of the said — and hereditaments, have and receive the yearly rent or annual sum of £—— of lawful money of Great Britain and Ireland, free from taxes, and without any other deduction whatsoever, the said yearly rent or annual sum to be paid and payable at or in the common dining hall of Lincoln's Inn, in the county of Middlesex, by quarterly payments, on the twenty-fifth day of December, the twenty-fifth day of March, the twenty-fourth day of June, and the twenty-ninth day of September, in every year, in even portions; the first payment thereof to be made on such of the same days of payment as shall first happen after the solemnization of the said intended marriage; *And to the further use, intent, and purpose*, that the said [*intended wife*], (in case she shall survive the said [*intended husband*], her intended husband), and her assigns, shall and may, after the decease of the said [*intended husband*], yearly and every year, during the then remainder of her natural life, have and receive, by and out of the said — and hereditaments, the yearly rent or annual sum of £—— of lawful money aforesaid, free from taxes, without any other deduction whatsoever; such yearly rent or annual sum of £—— to be in full for the jointure of the said [*intended wife*], and in lieu, bar, and satisfaction of and for her whole dower and thirds at common law, or by or on account of custom or free bench, which she can or may, or otherwise might or could have or claim in or out of all and every or

APPOINTMENT  
AND RELEASE  
UPON  
MARRIAGE.

*Habendum.*

Until marriage, to the uses previously existing.

After the marriage, to the uses following—

To the intent that the intended husband may receive a rent-charge during the joint lives of himself and his father.

And to the intent that the wife may receive a rent-charge for her life, in bar of dower, in case she shall survive her husband.

APPOINTMENT  
AND RELEASE  
UPON  
MARRIAGE.

Power of dis-  
training for the  
respective rent-  
charges.

any of the freehold, copyhold, or customary manors, messuages, lands, tenements, and hereditaments, whereof or whereunto the said [*intended husband*], at any time or times during the said intended coverture, shall be seised or entitled, for any estate of freehold or copyhold of inheritance, or to which dower or freebench is incident, and to be paid to the said [*intended wife*] or her assigns, at or in the common dining hall of Lincoln's Inn, in the county of Middlesex, in equal portions quarterly, on the several days hereinbefore mentioned; the first quarterly payment thereof to be made on such of the said days as shall first happen after the decease of the said [*intended husband*]; *And to and for this further use, intent, and purpose*, that, in case any quarterly payment or payments of either the said yearly rents or annual sums of £—— and £—— (c), so payable for the time being as aforesaid, or any part thereof, shall at any time or times be in arrear or unpaid by the space of fourteen days after any of the said days whereon the same ought to be paid as aforesaid, then and so often as the same shall happen, it shall be lawful for the person or persons for the time being entitled to the yearly rent or annual sum so in arrear as aforesaid, into and upon the said —— and hereditaments, and into and upon every or any part thereof, to enter and distrain for the same; and the distress and distresses then and there found, to take, lead, drive, carry away, and impound, and in pound to detain and keep, until all such arrears of the said yearly rent or annual sum, together with all costs and expenses occasioned by taking and keeping such distress or distresses, shall be fully satisfied; and in default of payment thereof, or of any part thereof, in due time to appraise, sell, and dispose of such distress or distresses, or otherwise to act therein, according to the due course of law, in like manner as in cases of distress taken for non-payment of rent reserved upon common leases; to the intent that thereby all such arrears of the said yearly rent or annual sum as aforesaid, and all costs and expenses attending the non-payment and recovery of the same, shall be fully satisfied; *And to and for*

Power of entry.

(c) This precedent shews the manner of framing powers of distress and entry, so as to apply to several rent-charges. The fact, that a power of distress is incident to a rent-charge, has been very little attended to in practice.



*this further use, intent, and purpose*, that, in case any quarterly payment or payments of either of the said yearly rents or annual sums of £—— and £——, or any part thereof, shall at any time or times be in arrear or unpaid by the space of twenty-eight days after any of the said days hereinbefore appointed for payment thereof, then and so often as the same shall happen (although no formal or legal demand thereof shall be made) it shall be lawful for the person or persons for the time being entitled to the yearly rent or annual sum which shall be so in arrear, into and upon all and singular the said —— and other hereditaments, or into and upon any part thereof in the name of the whole, to enter, and the same to hold and enjoy, and the rents and profits thereof to receive, for his, her, or their own use, until he, she, or they shall thereby be fully paid and satisfied the said arrears of the said yearly rent or annual sum, and all such arrears of the same as shall grow due or incur during the time that he, she, or they shall, by virtue of such entry or entries, be in possession of the premises or any part thereof; together with all costs and expenses whatsoever occasioned by the non-payment or recovery of the same, or any part thereof, or in relation thereto; such possession, when taken, to be without impeachment of waste. *And as to, for, and concerning* the said —— and hereditaments hereby appointed and released, or intended so to be, from and immediately after the solemnization of the said intended marriage, (subject to and charged with the said yearly rents or annual sums of £—— and £——, or such of them as, according to events, shall be payable for the time being as aforesaid, and to the remedies hereinbefore provided for securing the same respectively), *To the use* of the said [*trustees of two hundred years' term*], their executors, administrators, and assigns, for and during and unto the full end and term of two hundred years thence next ensuing, without impeachment of waste, upon and for the trusts, intents, and purposes, and subject to the provisoes, declarations, and agreements hereinafter expressed concerning the same term; and immediately after the end, expiration, or other sooner determination of the said term of two hundred years, and in the meantime subject thereto and to the trusts thereof, *To the use* of the said [*father*] and his assigns, during the term of his natural

APPOINTMENT  
AND RELEASE  
UPON  
MARRIAGE.

And subject to the said rents-charge to the use of trustees for two hundred years;

Remainder to the use of the father for life.

APPOINTMENT  
AND RELEASE  
UPON  
MARRIAGE.

Remainder to the use of trustees, to preserve contingent remainders.

Remainder to the use of the intended husband for life;

Remainder to the use of trustees, to preserve contingent remainders;

Remainder to the use of the children as tenants in common in fee.

Cross limitation in case of death under twenty-one, and without issue.

life, without impeachment of or for any manner of waste; and immediately after the determination of that estate, by forfeiture or otherwise, in his lifetime, *To the use* of the said [trustees] and their heirs, during the life of the [father], in trust to support the contingent uses hereinafter limited; and for that purpose to make entries and bring actions, as occasion may require; but nevertheless, to permit the said [father] and his assigns, during his life, to receive the rents and profits of the premises, for his and their own use and benefit; and immediately after his decease, *To the use* of the said [intended husband] and his assigns, during the term of his natural life, without impeachment of or for any manner of waste; and immediately after the determination of that estate by forfeiture or otherwise, in his lifetime, *To the use* of the said [trustees] and their heirs, during the life of the said [intended husband], in trust to support the contingent uses hereinafter limited; and for that purpose to make entries and bring actions, as occasion may require; but nevertheless, to permit the said [intended husband] and his assigns, during his life, to receive the rents and profits of the premises, for his and their own use and benefit; and immediately after the decease of the survivor of them the said [father] and [intended husband], *To the use (d)* of all and every the child and children of the said [intended husband] on the body of the said [intended wife] lawfully to be begotten, equally to be divided among them, share and share alike, as tenants in common, and not as joint tenants, and his, her, or their heirs and assigns, or respective heirs and assigns for ever; And in case any one or more of such children shall die under the age of twenty-one years, and without leaving lawful issue living at his, her, or their decease, or respective deceases, then as to as well the original share or shares, as the share or shares surviving or accruing to such last-mentioned child or children under this present limitation, *To the use* of all and every the surviving and other child or children of the said [intended husband] on the body of the said [intended wife] lawfully to be begotten, to be divided among them if more than one,

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(d) This precedent is distinguished from most of the other precedents in not giving to the parent a power of selection.

share and share alike as tenants in common, and not as joint tenants, his, her, and their heirs and assigns, or respective heirs and assigns, for ever; And in case all such children but one shall happen to die under the age of twenty-one years, and without leaving lawful issue living at their respective deceases, or if there shall be originally but one such child, then *To the use* of such one or only child, his or her heirs and assigns, for ever; And in case there shall be no child of the said [*intended husband*] on the body of the said [*intended wife*] to be begotten, or in case there shall be such child or children, and he, she, or they shall die under the age of twenty-one years, and without leaving lawful issue living at his, her, or their decease, or respective deceases, then *To the use* of the said [*trustees of six hundred years' term*], their executors, administrators, and assigns, for and during and unto the full end and term of six hundred years thence next ensuing, without impeachment of or for any manner of waste, Upon and for the trusts, intents, and purposes, and subject to the provisoes, declarations, and agreements hereinafter expressed concerning the same; And after the end, expiration, or other sooner determination of the said term of six hundred years; and in the meantime subject thereto and to the trusts thereof, and charged and chargeable as aforesaid, *To the use* of the said [*father*], his heirs and assigns, for ever; And to, for, or upon no other use, trust, intent, or purpose whatsoever. *And as to, for, and concerning* the said term of two hundred years hereinbefore limited in use to the said [*trustees of two hundred years' term*], their executors, administrators, and assigns as aforesaid, it is hereby agreed and declared between and by the said parties hereto, that the same is so limited to them upon and for the trusts, intents, and purposes, and subject to the provisoes, declarations, and agreements hereinafter expressed concerning the same; (that is to say), *Upon trust*, in case and so often as any quarterly payment or payments of either of the said yearly rents or annual sums of £—— and £——, so payable respectively for the time being as aforesaid, or any part thereof respectively, shall be unpaid by the space of forty days after any of the said days hereinbefore appointed for payment of the same respectively, (although no formal or legal demand thereof shall be

APPOINTMENT  
AND RELEASE  
UPON  
MARRIAGE.

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In default of any child of the marriage attaining twenty-one, or dying under age without issue,

To the use of trustees for six hundred years.

And subject thereto to the father in fee.

Trusts declared of the term of two hundred years;

In the first place for further securing the two rents-charge.

APPOINTMENT  
AND RELEASE  
UPON  
MARRIAGE.

made); then, and so often as the same shall happen, that they the said [*trustees of two hundred years' term*], or the survivor of them, or his executors or administrators, shall and do from time to time, by and out of the rents and profits of the said — and hereditaments comprised in the said term of two hundred years, or by demising, leasing, selling, or mortgaging the same premises or any of them, for all or any part of the same term, or by such other ways or means as to them or him shall seem meet, raise and levy such sum and sums of money as shall be sufficient from time to time to pay and satisfy such arrears of the said yearly rents or annual sums or either of them; together with all the costs and expenses (if any) which the said [*trustees of two hundred years' term*], or the survivor of them, or his executors or administrators, and the person or persons for the time being respectively entitled to such arrears as aforesaid, shall sustain or be put unto by reason of the non-payment thereof, or any part thereof respectively, at the times and in the manner aforesaid, and shall and do pay, apply, and dispose of the same monies accordingly; *And upon further trusts (e)*, in case the said [*intended husband*] shall die in the lifetime of the said [*father*] (*f*), and there shall be one or more child or children of the said [*intended husband*] on the body of the said [*intended wife*] to be begotten, born in his lifetime, or in due time after his decease, then, and in such case, that the said [*trustees of two hundred years' term*], and (*g*) the

And in trust, in case the intended husband shall die in his father's lifetime, to raise money for the maintenance of the children of the marriage.

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(*e*) Here, it will be observed, the same term is made to answer two distinct purposes;—*first*, the securing the rent-charge payable to the husband during the joint lives of himself and his father; and *secondly*, the securing the rent-charge payable to the wife after the husband's death. Such a combination of purposes tends to simplify settlements of this nature.

(*f*) In the event of the father surviving the intended husband, the children would be destitute of a fund for maintenance without a provision to this effect, for which there would be still more urgent occasion, if the wife's jointure had been postponed to the father's decease, which is not the case.

(*g*) As a point of verbal accuracy, it may just be noticed that the conjunctive *and* seems proper where the trust to be performed is of a conti-



APPOINTMENT  
AND RELEASE  
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MARRIAGE.

survivor of them, and his executors or administrators, shall and do, during the then remainder of the life of the said [*father*], (subject and without prejudice to the raising and paying the said yearly rent or annual sum of £——, and to the remedies and powers for recovering the same as aforesaid), by and out of the annual rents and profits of the said —— and hereditaments comprised in the said term of two hundred years, levy and raise for the maintenance and education of such child or children, the yearly sum or sums of money hereinafter mentioned; (that is to say), in case there shall be but one such child, then the yearly sum of £——; in case there shall be two such children, and no more, then the yearly sum of £—— to be equally divided among them; and in case there shall be three or more such children, then the yearly sum of £——, to be equally divided among them; and shall and do, at their or his discretion, either themselves pay and apply such sum or sums for the maintenance and education of such child or children accordingly, or shall and do (if they the said trustees or trustee for the time being shall think proper), pay such sum and sums of money to the guardian or guardians for the time being of such child or children, to be by such guardian or guardians applied for or towards the maintenance and education of such child or children respectively; and it is hereby agreed and declared, that such respective annual sums for maintenance as aforesaid shall be paid in equal portions quarterly on the several days of payment hereinbefore mentioned; the first payment thereof to be made on such of the said days as shall first happen after the decease of the said [*intended husband*] dying in the lifetime of the said [*father*]. *Provided always*, that in case any of the said children who shall become entitled to the provision for maintenance lastly hereinbefore mentioned, shall afterwards die in the lifetime of the said [*father*], then the share of each such child so dying of and in such provision for maintenance as aforesaid, shall devolve upon and vest in the survivors or survivor of them, in

Clause of survivorship and accruer.

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nuous nature, consisting of acts to be done from time to time, and the disjunctive *or*, where, on the contrary, it relates to a single transaction to be accomplished at once.

APPOINTMENT  
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UPON  
MARRIAGE.

In trust to per-

augmentation of and in addition to his, her, or their original share or shares thereof as aforesaid; but so that the provision for maintenance of no one such child shall exceed the yearly sum of £——, nor of two such children the yearly sum of £—— between them (*h*): *And upon further trust,*

Remark on the provision for maintenance.

(*h*) Less care is usually evinced in providing for the maintenance of infant *cestuis que use* of the lands, than of infant portionists; though, obviously, the want of a discretionary authority to receive and appropriate the rents for such maintenance during minority must be very inconvenient, often indeed occasioning the necessity of resorting to the Court of Chancery to have a guardian appointed. It might frequently be done too, without vesting in the trustees any additional estate or power of entry; for it commonly happens that they are possessed of a jointure term, the trusts of which might conveniently be extended to the object of providing for the maintenance of minors. In the present case, the following addition merely to the trusts of the two hundred years' term would be requisite—

Trust of term to raise an annual sum for maintenance during the minority of the *cestuis que use* of the inheritance.

“*And upon further trust,* in case at the decease of the survivor of them the said [*father*] and [*intended husband*], any child or children of the said [*intended husband*] on the body of the said [*intended wife*] to be begotten, or other the person or persons for the time being entitled to the possession or the receipt of the rents and profits of the said —— and hereditaments, or any share or respective shares thereof under the limitations hereinbefore contained concerning the freehold and inheritance of the same hereditaments, shall be under the age of twenty-one years, then, that they the said [*trustees of two hundred years' term*], and the survivor of them, his executors or administrators, do and shall (subject and without prejudice as aforesaid), apply the annual rents and profits, or a proportion of the same answering to the share or respective shares of such child or children, or other the person or persons entitled as aforesaid, of and in the said freehold and inheritance of the said hereditaments, or such part or parts of the said rents or profits, or of such share or shares thereof, as the said trustees or trustee in their or his discretion shall think proper, in and towards the maintenance and education of such child or children, or other person or persons entitled as aforesaid, in

that they the said [*trustees of two hundred years' term*], and the survivor of them, and his executors or administrators, shall and do permit and suffer the person or persons to whom the next or immediate reversion or remainder expectant upon the determination of the said term of two hundred years of and in the premises therein comprised shall for the time being belong, to receive and take the rents and profits, or the surplus of the rents and profits (as the case may be), which shall remain after, and not be applied in or towards the execution and performance of the trusts here-

APPOINTMENT  
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mit the persons  
next in remain-  
der to receive  
the overplus of  
the rents.

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such manner as the said trustees or trustee shall deem expedient, or shall and do, if they the said trustees or trustee shall prefer so to do, pay such rents and profits, or share or shares thereof, to the guardian or guardians for the time being of such child or children, or other person or persons entitled as aforesaid, to be by such guardian or guardians applied for or towards the maintenance and education of such child or children, or other person or persons entitled as aforesaid respectively; *And upon further trust* that the said [*trustees of two hundred years' term*], and the survivor of them, and his executors or administrators, shall and do lay out and invest the unapplied part of any of the said rents and profits in their or his own names or name, in some or one of the public stocks or funds of Great Britain and Ireland, for the benefit of the child or children, or other person or persons entitled as aforesaid, from whose share or respective shares the same shall have arisen, with power nevertheless (if it shall be deemed expedient by the said trustees or trustee) to apply such accumulated fund or any part thereof in or towards the maintenance and education of the child or children, or other person or persons respectively to whom the same shall belong, at any subsequent period of his, her, or their minority or respective minorities; And as to so much of the said accumulated fund as shall not be so applied, *Upon trust*, that the said [*trustees*], or the survivor of them, his executors or administrators, shall pay over, assign, and transfer the same to the person or persons respectively entitled thereto, when and as soon as he, she, or they shall be competent to give an effectual discharge for the same."

APPOINTMENT  
AND RELEASE  
UPON  
MARRIAGE.

Cesser of this  
term.

Trusts declared  
of the term of  
six hundred  
years.

In trust for rais-  
ing 5000*l.* for  
such persons as  
the wife shall  
appoint.

by declared of the same term of two hundred years: *Provided also*, and it is hereby agreed and declared between and by the said parties hereto, that, when the trusts hereinbefore declared concerning the said term of two hundred years shall have been performed or satisfied, or shall have become unnecessary or incapable of taking effect, and the costs and charges of the trustees of the same term, their executors, administrators, and assigns, in and about the execution of the same trusts, shall have been fully paid and satisfied, (and which they are hereby respectively authorized and empowered to levy and raise by all or any of the ways and means aforesaid, and to retain accordingly); then, and immediately thenceforth, the said term of two hundred years of and in the premises therein comprised, or so much thereof as shall remain unsold and undisposed of for the purposes aforesaid, shall cease, determine, and be absolutely void. *And as to, for, and concerning* the said term of six hundred years hereinbefore limited in use to the said [*trustees of six hundred years' term*], their executors, administrators, and assigns as aforesaid, it is hereby agreed and declared between and by the said parties hereto, that the same is so limited to them upon and for the trusts, intents, and purposes, and subject to the provisoes, declarations, and agreements hereinafter expressed concerning the same term; (that is to say, *Upon trust*, in case there shall be no child or children of the said [*intended husband*] on the body of the said [*intended wife*], his intended wife, to be begotten, or being such, he, she, or they shall die under the age of twenty-one years, and without leaving lawful issue living at his, her, or their decease or respective deceases; Then, that they the said [*trustees of six hundred years' term*], or the survivor of them, his executors or administrators, shall and do, on the decease of the survivor of them the said [*father*] and [*intended husband*], or as soon afterwards as the said event shall happen, by and out of the rents and profits of the — and hereditaments comprised in the said term of six hundred years, or by mortgage or sale thereof, or of any part thereof, or by all and every or any of the ways and means aforesaid, or by any other ways and means whatsoever as to them the said [*trustees of six hundred years' term*], or the survivor of them, his executors or administrators, shall seem meet,



APPOINTMENT  
AND RELEASE  
UPON  
MARRIAGE.

levy and raise the sum of 5000*l.* (*i*) of lawful money of Great Britain and Ireland, and pay and apply the same Upon such trusts, and to and for such intents and purposes, and under and subject to such powers, provisoes, and declarations as she the said [*intended wife*], notwithstanding her said intended or any future coverture, and whether she shall be sole or married, by any deed or deeds, writing or writings, with or without power of revocation, or by her last will and testament, respectively, to be by her duly executed in the presence of and to be attested by two or more credible witnesses, shall direct or appoint; And in default of such direction or appointment, [and as to so much and such part or parts thereof whereof no such direction or appointment shall happen to be made; and also subject to such direction or appointment where the same shall happen not to be a complete and entire appointment of the whole interest and property therein (*j*)], *In trust* for such person or persons of the blood and kindred of the said [*intended wife*] living at the time of her decease, as would by virtue of the statutes of distributions have become entitled to her personal estate in case she had died (*k*) without leaving a husband, and intestate, and in the same shares and manner as he, she, or they would in that case have become entitled to the same. (*Proviso for cesser of the six hundred years' term similar to the proviso for cesser of the two hundred years' term; and usual powers of leasing, sale and exchange, and to appoint new trustees. Covenants for title by the several settlors (father and husband), according to their respective estates.* IN WITNESS, &c.

And in default of appointment in trust for the next of kin to wife.

Provisoes for cesser, &c.

(*i*) This restores to the lady her pecuniary fortune in the event of there being no issue of the marriage.

(*j*) The words in brackets are surplusage, and may be properly omitted. If any interest is left undisposed of by her, it is *pro tanto* a "default appointment."

(*k*) Some gentlemen add, "domiciled in England," in order to exclude distribution according to Scotch law, which also depends on statutes.

OF AN UNDIVIDED SHARE  
ON MARRIAGE.

CONVEYANCE of an undivided SHARE of an Estate, PREVIOUSLY to MARRIAGE, in TRUST for SALE. The Trustees are invested with a Power of Appointment, and the TRUSTS of the MONEY are declared by a SEPARATE DEED (a).  
POWER to CONCUR in a PARTITION.

Parties.

Recital of intended wife's seisin.

—Intended marriage.

—Agreement for conveyance.

Testatum.

Release by intended wife with the privity of the intended husband.

THIS INDENTURE, made the — day of —, 18—, BETWEEN [*intended wife*], of &c., of the first part; [*intended husband*], of &c., of the second part; and [*trustees*], of &c., of the third part. WHEREAS the said [*intended wife*] is seised or entitled for an estate of inheritance in fee-simple of or to one undivided third part or share of and in the — and hereditaments hereinafter particularly mentioned. AND WHEREAS a marriage is intended to be shortly solemnized between the said [*intended husband*] and [*intended wife*]. AND WHEREAS upon the treaty for the said intended marriage, it was agreed that the said [*intended wife*] should convey her said undivided third part of and in the said hereditaments unto the said [*trustees*], their heirs and assigns, to the uses, upon and for the trusts and purposes, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed or referred to concerning the same. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the said intended marriage, and in consideration of the sum of 10s. of lawful money of Great Britain and Ireland, paid by the said [*trustees*] to the said [*intended wife*], at or immediately before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged), *She* the said [*intended wife*], with the privity and approbation

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(a) By this plan, the deed of conveyance may be produced or delivered up to a purchaser without disclosing the trusts, or rendering it necessary that the deed containing them should be covenanted to be produced.

of the said [*intended husband*], (testified &c.), *Doth* by these presents grant, bargain, sell, release, and confirm unto the said [*trustees*] and their heirs, (in the actual possession, &c.), ALL THAT one undivided third part, or other the share of her the said [*intended wife*], of and in (*describe parcels, general words*), And all the estate, &c., TO HAVE AND TO HOLD the said undivided third part of and in the said — and hereditaments hereinbefore described, and other the premises hereby released or intended so to be, with their appurtenances, unto the said [*trustees*] and their heirs for ever, until the said intended marriage shall be solemnized, *To the use* of the said [*intended wife*], her heirs and assigns; And after the solemnization of the said intended marriage, *To the uses*, upon and for the trusts, intents, and purposes, and subject to the powers, provisoes, agreements, and declarations hereinafter mentioned or referred to concerning the same, that is to say, *To such uses (b)*, upon such trusts, and for such intents and purposes as the said [*trustees*], and the survivor of them and his heirs, in the performance and exercise of any of the trusts, powers, and authorities herein contained, shall from time to time during the lives of the said [*intended husband*] and [*intended wife*], or the life of the survivor of them (*c*), by any deed or deeds to be attested or not, direct or appoint; And in default of, and until such direction or appointment, *To the use* of the said [*trustees*], their

OF AN UNDIVIDED SHARE  
ON MARRIAGE.

*Habendum* to the use of trustees in fee.

In trust for the wife until marriage.

To such uses as the trustees shall appoint.

(*b*) Where it is intended to sell the property in small parcels, it is often convenient to give to the trustees for sale a power of appointment, in order to enable them to vest the inheritance in the purchasers by a single deed. Another expedient, frequently adopted in such a case, is to make the conveyance by bargain and sale enrolled, in order that the enrolment, being matter of record, might be accessible to and used as evidence by the purchasers at large, without the production of the original. This plan, however, is incompatible with the former; for, as a bargain and sale operates merely as a transfer of the *use* to the bargainees, who must give a valuable consideration, a power of appointment cannot be created by it.

Remark on the power of appointment.

(*c*) This limitation is added, in order to exclude any objection to the power founded on the doctrine against perpetuities.

OF AN UNDI-  
VIDED SHARE  
ON MARRIAGE.  
And afterwards  
in trust for sale.

Receipts of trust-  
tees to discharge  
purchasers.

Declaration of  
trusts of money.

heirs and assigns, for ever; *Upon trust*, nevertheless, that they the said [*trustees*], and the survivor of them and his heirs, do and shall, with the consent in writing of the said [*intended husband*] and [*intended wife*], his intended wife, or of the survivor of them; and after the decease of such survivor, then at the discretion of the said trustees or trustee for the time being, absolutely sell and dispose of the said undivided part and hereditaments hereby released or any part thereof, either by public auction or private contract, or partly in one mode and partly in the other, to any person or persons whomsoever, at such price or prices as to the said trustees or trustee shall seem proper, with power, if deemed expedient, to purchase in the same hereditaments or any part thereof, at any auction or auctions; and also to rescind or alter the terms of any contract for sale which may have been entered into; And do and shall in the execution of the said trust, (with such consent or at such discretion as aforesaid), enter into and make and execute all such contracts, assurances or things as the said trustees or trustee shall think proper; AND it is hereby agreed and declared between and by the parties to these presents, that the receipt or receipts in writing of the said trustees or trustee for the time being, for any sum or sums of money payable to them or him under or by virtue of these presents, shall effectually discharge the person or persons paying the same from all responsibility in respect of the application thereof; *And further*, that the trustees or trustee for the time being of these presents shall stand and be possessed of the sum or sums of money to arise or be produced by any sale or sales which shall be made in pursuance of the trust hereinbefore contained; and also, of the rents and profits of the said undivided part or share, hereditaments and premises, until the same shall be sold, Upon and for such trusts, intents, and purposes, and subject to such powers, provisoes, agreements, and declarations as are or shall be expressed concerning the same, in and by an indenture already prepared and engrossed bearing or intended to bear even date with these presents, and made or intended to be made between the said [*intended husband*], of the first part; the said [*intended wife*], of the second part; and the said [*trustees*], of the third part:



*Provided always*, and it is hereby agreed and declared between and by the parties to these presents, that it shall be lawful to and for the said trustees or trustee for the time being of these presents, at any time or times hereafter before the hereditaments and premises hereby released shall be sold in execution of the trusts hereinbefore contained, at the request and by the direction of the said [*intended husband*] and [*intended wife*], or of the survivor of them, to be testified by any writing or writings under their, his, or her hands and seals or hand and seal, and after the decease of such survivor, then at the discretion of the said trustees or trustee, to join and concur with the person or persons for the time being seised of or entitled to the other part or share, or parts or shares of and in the said — and hereditaments, of which an undivided part or share is hereby released or intended so to be, or empowered to concur in a partition thereof, in making a partition or division of the said — and hereditaments, or any of them, or any part or parcel thereof; And that for the purpose of effectuating any such partition or division as aforesaid, it shall be lawful for the said trustees and trustee (at such request and direction, or at such discretion as aforesaid), to enter into, make, do, and execute all such contracts, assurances, and things as to them or him shall seem reasonable or proper; And also to pay or receive any sum or sums of money for equality of partition; *And also*, that upon any such partition or division as aforesaid, the hereditaments which shall be received in lieu of or as a specific allotment for the undivided part or share, hereditaments and premises hereby released or intended so to be, or any of them, or any part thereof, shall be conveyed to, upon, and for such and the same uses, trusts, and purposes, and subject to such and the same powers, provisoes, agreements, and declarations (except the power of partition hereinbefore contained), as are in and by these presents expressed or referred to concerning the said undivided share and hereditaments hereby released and intended so to be, or as near thereto as the deaths of parties and the other intervening accidents will admit of; And in case, in pursuance of the authority in that behalf hereinbefore contained, the said trustees or trustee for the time being shall receive any sum or sums of money for equality of partition as aforesaid, they or he

OF AN UNDIVIDED SHARE  
ON MARRIAGE.  
Power to concur  
in partition until sale.

OF AN UNDI-  
VIDED SHARE  
ON MARRIAGE.

shall stand possessed thereof upon and for such trusts, intents, and purposes, and subject to such powers, provisoes, agreements, and declarations as are hereinbefore expressed or referred to concerning the monies to arise from the sale or sales to be made under the authority of these presents; And that in case the said trustees or trustee shall be required to pay any sum or sums of money for equality of partition, then it shall be lawful for the said trustees or trustee for the time being to raise the same (*d*) by a charge or mortgage of the hereditaments, the entirety whereof shall or may be allotted to them or him in lieu of or substitution for the said undivided part and hereditaments hereby released as aforesaid, and at such rate of interest, and upon such other terms and conditions as the said trustees or trustee shall think proper. (*Add powers to the trustees to lease, and to the husband and wife and the survivor to appoint new trustees, and the usual indemnity clauses*). IN WITNESS, &c.

Variation where  
the trustees have  
a personal fund.

(*d*) If the trustees are possessed of any stock or personal fund, add—  
“by the sale and conversion of any of the stocks, funds, and securities whereon the said trust monies shall for the time being happen to be invested, or”

ARTICLES *for the SETTLEMENT of the REAL ESTATE of a Lady UNDER AGE.* *The INHERITANCE is to be vested in TRUSTEES, upon TRUSTS for the Benefit of the intended HUSBAND and WIFE, for Life, with Remainder, (subject to a Power of Selection in Favour of the Issue), to the CHILDREN equally in TAIL, with cross Remainders. The Trust for the HUSBAND is made to determine on ALIENATION, BANKRUPTCY, &c. PROVISION for MAINTENANCE—POWERS of LEASING and SALE (a).*

ARTICLES ON  
THE MARRIAGE  
OF A MINOR.

**T**HIS INDENTURE, made the — day of —, BETWEEN [*intended husband*], of &c., of the first part; [*intended wife*], of &c., only daughter of [*intended wife's father*], of &c., (an infant under the age of twenty-one years), of the second part; the said [*intended wife's father*], of the third part; and [*trustees*], of &c., of the fourth part. (*Recite the will of the lady's uncle, by which certain lands were devised to her in fee, and the death of the testator, without revoking his will*). AND WHEREAS the said [*intended wife*] attained her age of nineteen years, some time in the month of — now last past. AND WHEREAS a marriage hath been agreed on and is intended shortly to be solemnized between the said [*intended husband*] and [*intended wife*]. AND

Parties.

Recital of will  
devising lands.

—age of intended  
wife;

—intended  
marriage;

—agreement  
to settle.

(a) It would be well to indorse a memorandum of this deed on the last or one other of the recent title-deeds, especially if they are left in the possession of the husband. Should the husband and wife convey to a person having notice of the articles, the property would be bound even though the alienee had paid a valuable consideration, and though, too, in the absence of any act on the part of the wife during her life, her heir would take the property free from any obligation to perform the articles. As to the effect of marriage articles in relation to the real estate of a female infant, *vide ante*, p. 30.

ARTICLES ON  
THE MARRIAGE  
OF A MINOR.

*Testatum.*

Covenant by the intended husband and wife to convey after the wife shall have attained majority.

Declaration of trusts.

WHEREAS, upon the treaty for the said intended marriage, it was agreed that the said — and hereditaments should be conveyed to and vested in the said [*trustees*], their heirs and assigns, Upon the trusts and for the intents and purposes hereinafter declared concerning the same. NOW THEREFORE THIS INDENTURE WITNESSETH, that, in consideration of the said intended marriage, the said [*intended husband*], so far as relates to his own acts and deeds, and the acts and deeds of all persons claiming under him, Doth for himself, his heirs, executors, and administrators, and the said [*intended wife*], with the privity and approbation of the said [*intended wife's father*], testified by his executing these presents, and so far as the said [*intended wife*] lawfully can or may, and as to the acts and deeds of her the said [*intended wife*], and of her heirs and assigns, and of all persons claiming under her or them, Doth, for herself, her heirs, executors, and administrators, covenant and agree with the said [*trustees*], their heirs and assigns, that, in case the said intended marriage shall take effect, the said [*intended husband*] and the said [*intended wife*], and all other necessary parties, shall and will, as soon as conveniently may be after the said [*intended wife*] shall have attained her age of twenty-one years, at the costs and charges of the said [*intended husband*], by such fine or fines, or other conveyances and assurances in the law, as by the said [*trustees*] or the survivor of them, or his heirs, or their or his counsel in the law, shall be advised or devised and required, effectually convey and assure ALL THAT (*describe parcels*), with their appurtenants, unto and to the use of the said [*trustees*], their heirs and assigns, for ever, Upon the trusts and for the intents and purposes, and subject to the powers, provisoes, agreements, and declarations hereinafter declared concerning the same, (that is to say)(*b*), UPON

As to the mode of framing articles.

(*b*) Marriage articles, which are to be carried into effect by a future conveyance, ought not merely to contain a compendium or summary of the intended limitations and clauses, but to state them in detail, leaving nothing else to be done by the conveyance, than simply to limit the property to the prescribed uses, and which, if the conveyance be indorsed on the articles, (as in the next precedent), need not even be recited.



TRUST that they the said [*trustees*], and the survivor of them and his heirs, do and shall, yearly and every year during the joint lives of the said [*intended husband*] and [*intended wife*], by and out of the rents and profits of the said — and hereditaments, levy and raise the clear annual sum of 200*l.*, free and clear of and from all deductions for present or future taxes, or any other matter or thing whatsoever; And do and shall pay, apply, and dispose of the said annual sum of 200*l.*, by equal quarterly payments, on the — day of —, the — day of —, the — day of —, and the — day of —, in every year, to such person and persons only, and for such purposes only, as the said [*intended wife*], notwithstanding her coverture, shall from time to time, by any writing or writings under her hand, direct, (but not so as to deprive herself of the benefit thereof, by any sale or charge or otherwise, in the way of anticipation); And in default of such direction, into the proper hands of her the said [*intended wife*], for her sole and separate use and benefit, by way of pin-money, exclusively of the said [*intended husband*], and so that the same shall not be subject to his control or debts; the first quarterly payment of the said annual sum to be made on such of the said days of payment as shall happen next after the solemnization of the said intended marriage; And subject to the payment of the said annual sum of 200*l.*, UPON TRUST to pay the rents and profits of the said — and hereditaments to the said [*intended husband*], for and during the term of his natural life, or until he shall alien, charge, or incur the same or any part thereof, or until any writ of execution shall issue against the said [*intended husband*], by virtue whereof his life interest in the said rents, issues, and profits shall be liable to be seized, attached, or disposed of, or until the said [*intended husband*] shall be found and declared a bankrupt, or shall accept the benefit of any act of Parliament for the relief of insolvent debtors, or the said interest of the said [*intended husband*] shall otherwise become vested in any other person or persons (c); in any or either of which cases, the last-mentioned

ARTICLES ON  
THE MARRIAGE  
OF A MINOR.

To raise pin-  
money for the  
separate use of  
the wife.

Without power  
of anticipation.

To pay the re-  
sidue of the  
rents to the hus-  
band for life, or  
until bankrupt-  
cy, &c.

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(c) This clause may be more shortly expressed as follows—

“ or until, by any act of the said [*intended husband*], or by

ARTICLES ON  
THE MARRIAGE  
OF A MINOR.

And after its  
determination,  
in trust for the  
separate use of  
the wife.

After the de-  
cease of the hus-  
band, for the  
wife for life.

After the de-  
cease of the wife  
in trust for the  
children and  
issue, as the hus-  
band and wife  
shall appoint.

trust shall immediately thereupon cease and determine; And from and after such the determination of the trust hereinbefore declared for the benefit of the said [*intended husband*], in case the same shall happen during the joint lives of the said [*intended husband*] and [*intended wife*], UPON TRUST that they the said [*trustees*], and the survivor of them, and his heirs, do and shall thenceforth, during the joint lives of the said [*intended husband*] and [*intended wife*], pay and apply the rents and profits of the said — and hereditaments to such person or persons, and for such purposes only as the said [*intended wife*], notwithstanding her coverture, by any writing or writings under her hand shall direct, but not so as to deprive herself of the benefit thereof, by any sale or charge, or otherwise, by way of anticipation; And in default of such direction, into the proper hands of the said [*intended wife*], for her sole and separate use and benefit, exclusively of the said [*intended husband*], and so that the same shall not be subject to his control or debts; And after the decease of the said [*intended husband*], then as to the said — and hereditaments, IN TRUST for the said [*intended wife*] and her assigns, during the term of her natural life; And after the decease of the said [*intended husband*], or the determination during his lifetime of the trust hereinbefore declared for the benefit of him the said [*intended husband*], as aforesaid, and the decease of the said [*intended wife*], IN TRUST for all and every or such one or more, exclusively of the other or others, of the child or children, grandchild, grandchildren, or other issue of the said [*intended husband*] by the said [*intended wife*], his intended wife, (such grandchild or grandchildren or other issue to be born in the lifetime of the said [*intended husband*] and [*intended wife*], or one of them), at such age, day, or time, or respective ages, days, or times, for such estate or estates, or interest or interests; and if more than one, in such shares and proportions, and with, under, and subject to such powers,

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operation of law or otherwise, the said rents and profits, or any part thereof, or any interest therein, shall become vested in or belong to any person or persons other than the said [*intended husband*].”

proviso, conditions, restrictions, limitations, and remainders over, and charged and chargeable with such sum and sums of money, either annual or in gross, being for the benefit of some one or more of the said children, grandchildren, or other issue, and in such manner as the said [*intended husband*] and [*intended wife*] shall by any deed or deeds, instrument or instruments in writing, with or without power of revocation and new appointment, to be by them sealed and delivered in the presence of and attested by two or more credible witnesses, from time to time direct or appoint (*d*); And in default of and until such direction or appointment, and so far as any such direction or appointment shall not extend, IN TRUST for all and every the children and child of the said [*intended husband*] by the said [*intended wife*], his intended wife, and the heirs of their respective bodies, to be divided between or among the said children, in equal shares, as tenants in common; And if any one or more of the said children shall die without issue of his, her, or their body or respective bodies, Then as to as well the original share or respective shares of the child or children so dying, and of whom there shall be such failure of issue as aforesaid, as the share or shares which shall have survived or accrued to any such child or children, or to the heirs of his, her, or their body or respective bodies, under this present limitation, IN TRUST for the other or others of the said children of the said [*intended husband*] by the said [*intended wife*], his intended wife, and the heirs of his, her, or their body or respective bodies; and to be divided between or among the last-mentioned children, if more than one, in equal shares, as tenants in common; And if all the children but one of the said [*intended husband*] by the said [*intended wife*] shall depart this life without issue, or there shall be originally but one such child, Then as to the entirety of and in the said — and hereditaments, IN TRUST for such surviving, remaining, or only child, and the heirs of of his or her body; And for default of such issue, or in case there shall be no such child as aforesaid, IN TRUST for the said [*intended wife*], her heirs and assigns, for ever.

ARTICLES ON  
THE MARRIAGE  
OF A MINOR.

In default of appointment in trust for the children equally, in tail.

With cross remainders.

With the ultimate reversion to the wife.

(*d*) Here, it will be perceived, that the power is reserved to the parents jointly, and is not extended to the survivor, as in former precedents.

ARTICLES ON  
THE MARRIAGE  
OF A MINOR.Provision for  
maintenance.

*Provided always*, and it is hereby declared, that if, upon or at any time or times after the determination of the trusts hereinbefore limited in favour of the said [*intended husband*] and [*intended wife*], it shall happen that any child or children, or the issue of any child or children, of the said intended marriage, who under the trusts hereinbefore contained, or under any appointment or appointments to be made by virtue thereof as aforesaid, shall for the time being be entitled to the possession or the receipt of the rents and profits of the said —, hereditaments, and premises hereby covenanted to be settled, or any share or respective shares therein, shall be under the age of twenty-one years, then and in such case, it shall be lawful for the trustees or trustee for the time being of these presents, (subject, nevertheless, to any contrary direction or regulation in any such appointment or appointments which may happen to be made), to apply the rents and profits of the said —, hereditaments, and premises, or of the share or respective shares of such child, children, or issue therein (as the case may be), or such part thereof as the said trustees or trustee shall deem to be adequate for the purpose, in or towards the maintenance and education of the said child, children, or issue, during the period of his, her, or their minority or respective minorities, in such manner as the said trustees or trustee shall think proper; And the unapplied rents and profits (if any) shall from time to time be invested by the said trustees or trustee, in their or his own names or name, on Government security, for the benefit of the child or children respectively from whose share or respective shares the same shall have arisen; but such accumulated fund, or any part thereof, together with the annual produce (if any) arising therefrom, may be applied to and for the subsequent maintenance or advancement of such child or children or issue, if the said trustees or trustee shall think proper (e). *Provided also*, and it is hereby further declared, that it shall be lawful for

Power to lease.

As to provision  
for advancement.

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(e) It will be observed that there is no advancement clause. A provision of this nature, indeed, is not inserted in a settlement of real estate, as a matter of course, because it requires to be accompanied by a proper authority to raise the money so to be applied, by mortgage or otherwise. Such a provision will be found in subsequent precedents.



the trustees or trustee for the time being of these presents, to demise or lease, at rack-rent, all or any part of the said —, hereditaments, and premises hereby covenanted to be settled, with their appurtenants, to any person or persons, from year to year, or for any term or number of years not exceeding twenty-one years, to take effect in possession (*f*). *Provided also*, and it is hereby further declared, that it shall be lawful for the trustees or trustee for the time being of these presents, from time to time, with the consent in writing of the said [*intended husband*], so long as he shall be beneficially entitled to the rents and profits of the said — and hereditaments under the trusts hereinbefore contained, and afterwards, with the consent in writing of the said [*intended wife*], to sell or dispose of all or any part of the said — and hereditaments and premises, or any hereditaments to be purchased under this present power, to any person or persons whomsoever, in such manner and for such price or prices in money as to the said trustees or trustee for the time being shall seem meet, and by any deed or deeds to be executed by the said trustees or trustee for the time being, to convey and assure (*g*) the said hereditaments so to be sold as aforesaid to the purchaser or purchasers thereof, his, her, or their heirs or assigns, or as he, she, or they shall order or direct, discharged from all the trusts herein declared concerning the same, (but subject and without prejudice to any lease or leases which shall have actually been made of the said hereditaments or any part or parts thereof, by virtue of the power hereinbefore contained for that purpose); And it

Power of sale.

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(*f*) The exercise of this power is not guarded by the usual qualifications introduced into powers of leasing. Sometimes it is found convenient to frame the power in terms as general as those in the text, or even to render the power still more unqualified, by authorizing the granting of leases of *any* duration, and for any pecuniary consideration, by way of premium, provision being, in the latter case, made for the destination of the money so received; but, in the settlement of large estates, the restrictions contained in the ordinary forms are rarely dispensed with. Remark on the power of leasing.

(*g*) As the inheritance is vested in the trustees, leases and conveyances made by them under the powers of leasing and selling, take effect out of their estate. A power of revocation and new appointment, therefore, is not requisite.

ARTICLES ON  
THE MARRIAGE  
OF A MINOR.

is hereby further declared, that it shall be lawful for the said trustees or trustee for the time being, at any time or times, with such consent as aforesaid, to lay out all or any part of the money to arise from the sale of the said hereditaments hereby made saleable as aforesaid, in the purchase of other hereditaments in fee-simple, or in the purchase of lands of leasehold or copyhold tenure convenient to be held therewith, or with any part of the said hereditaments hereby covenanted to be settled, which shall not be then sold; And it is hereby further declared, that the said trustees or trustee for the time being shall cause the hereditaments to be from time to time purchased as aforesaid, to be conveyed or assured To the use of the said trustees or trustee, their or his heirs or assigns, upon the like trusts and with the like powers as are herein contained, or as near thereto as the nature and quality of the lands so to be purchased, the death of parties, the change of interests, or other intervening circumstances, will then admit of. *Provided also*, and it is further declared, that in the meantime, until the money to arise from the sale of the hereditaments hereby made saleable as hereinbefore is expressed shall be disposed of in the manner hereinbefore directed, it shall be lawful for the said trustees or trustee for the time being, in their or his discretion, to place out such money in the public stocks or funds of Great Britain and Ireland, or upon real securities in England, Wales, or Ireland, in the names or name of the said trustees or trustee, and to alter, vary, and transpose the stocks, funds, or securities, from time to time as occasion shall require, or as shall be thought fit; and the yearly dividends, interest, or produce of such stocks, funds, or securities, shall be paid to the person or persons who would from time to time be entitled to the rents and profits of the lands and hereditaments, in case the same were laid out in the purchase thereof. *Provided also*, and it is hereby further declared and agreed, that the receipts or receipt of the trustees or trustee for the time being, for any monies which shall be paid to them or him in the execution of any of the trusts herein contained, shall effectually discharge the persons or person paying the same from all responsibility in respect of the application thereof. AND it is hereby agreed and declared between and by the parties to

Provision for the investment of the purchase-money, until a re-purchase.

Exoneration to persons paying trust-monies.

Until the conveyance, lands to remain to the

these presents, that in the meantime, and until such conveyance and settlement as aforesaid shall be made in pursuance of the covenant hereinbefore in that behalf contained, the rents and profits of the said hereditaments so covenanted to be conveyed and settled as aforesaid, shall be received by such person or persons, and for such intents and purposes, as would for the time being have been entitled to receive the same, or as the same would for the time being have been applicable to, if such conveyance and settlement as aforesaid were then actually made (*h*). AND it is hereby agreed and declared between and by the parties to these presents, and particularly the said [*intended wife*], with the approbation of the said [*intended wife's father*], (testified as hereinbefore mentioned), doth hereby consent and agree that the provision hereinbefore agreed to be made for the said [*intended wife*] as aforesaid, shall be accepted by her in lieu, bar, and satisfaction of the dower or thirds and freebench, to which by the common law, or by custom or otherwise, she the said [*intended wife*] may or otherwise might become entitled, out of all or any lands or hereditaments of which the said [*intended husband*] shall or may, during the said intended coverture, be seised for an estate of inheritance, or for any other estate to which dower or freebench is incident. AND the said [*intended husband*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*trustees*], their heirs, executors, and administrators, in manner following, (that is to say), that he the said [*intended husband*], his heirs, executors, and administrators, shall and will, from time to time and at all times hereafter, at his or their costs and charges, upon the request of the said [*trustees*] or the survivor of them, or his heirs, execu-

ARTICLES ON  
THE MARRIAGE  
OF A MINOR.

uses prescribed  
by the cove-  
nant.

Provision for the  
intended wife to  
be in lieu of  
dower.

Covenant by the  
intended hus-  
band for further  
assurance.

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(*h*) Where the articles by which the infant's estate is covenanted to be conveyed comprise other property, a proviso is frequently inserted, declaring that, in the event of the infant refusing to concur in making a conveyance according to the articles, he or she shall be excluded from the benefit of all the trusts and limitations made or covenanted to be made in his or her favour, by those articles; and sometimes this is extended to the issue of such infant. Such a provision, of course, is inapplicable in the present instance, where the property of the infant constitutes the only subject of the articles.

Clause provid-  
ing for the event  
of the infant's  
refusal to con-  
cur.

ARTICLES ON  
THE MARRIAGE  
OF A MINOR.

tors, or administrators, make, do, and execute, or cause to be made, done, and executed, all such further and other acts and assurances which shall or may be necessary or requisite for establishing, corroborating, and confirming these presents, and every clause, matter, and thing herein contained, and for the better enabling the said [*trustees*] and the survivor of them, and his heirs, executors, or administrators, to perform and execute all and every the trusts hereby or by the said intended settlement to be in them respectively reposed, as by them the said [*trustees*], or the survivor of them, or his heirs, executors, or administrators, or any of the persons beneficially interested in the said premises, or their or any of their counsel in the law, shall be reasonably advised or devised and required. (*Add power to appoint new trustees, and indemnity clauses, ut ante, p. 131.*) IN WITNESS, &c.

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CONVEYANCE  
BY FINE IN  
PURSUANCE  
OF ARTICLES.

DECLARATION of the Uses of a FINE levied  
by HUSBAND and WIFE in execution of Articles  
(last Precedent), made during the INFANCY,  
and before the MARRIAGE, of the WIFE, and  
INDORSED THEREON.

Parties.

Recital that  
marriage had  
been solemniz-  
ed.

—That wife had  
attained her  
majority.

—Of fine levied  
by husband and  
wife.

**T**HIS INDENTURE, made the — day of —, 18—, BETWEEN the within-named [*husband*] and [*wife*], his wife, who before her marriage, and according to her name and description within contained, was [*wife by maiden name*], spinster, then an infant, of the one part; and the within-named [*trustees*], of the other part: WHEREAS, the marriage in and by the within-written indenture recited to be agreed upon, and as being in contemplation between the said [*husband*] and [*wife by maiden name*], was duly solemnized soon after the execution thereof. AND WHEREAS the said [*wife by present name*] attained her age of twenty-one years on the — day of — last. AND WHEREAS, for the purpose of performing and carrying into effect the covenant and agreement contained in the within-written indenture, the said [*husband*] and [*wife*], his wife, *Did* as of



— term now last past, in due form of law, acknowledge before his Majesty's Justices of the Court of Common Pleas at Westminster, unto the said [*trustees*] and their heirs, a fine *sur conuzance de droit come ceo &c.*, of the hereditaments and premises covenanted and agreed in and by the within-written indenture to be conveyed and assured by the description of (*copy parcels in fine*), and which said fine is intended to be forthwith duly levied, and to be completed with proclamations, but no use has yet been declared of the said fine. NOW THIS INDENTURE WITNESSETH, that it is hereby declared and agreed by and between the said parties hereto, and particularly the said [*husband*] and [*wife*] respectively do hereby declare and direct that the said fine so acknowledged as aforesaid by the said [*husband*] and [*wife*], his wife, of the said —, hereditaments, and premises described in, and covenanted and agreed in and by the within-written indenture to be conveyed and assured to the uses and in the manner therein expressed, with their and every of their appurtenances, shall from and after the levying and perfecting of the said fine operate and enure, and was, at the time of the acknowledgment thereof, intended to operate and enure, and that any and every other fine already acknowledged and levied, or hereafter to be acknowledged and levied by or between the said parties hereto, or any or either of them, of and concerning the said —, hereditaments, and premises, or any part thereof, shall operate and enure To THE ONLY PROPER USE of them the said [*trustees*], their heirs and assigns, for ever, Upon the trusts, and for the intents and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations in and by the within-written indenture expressed and declared, or covenanted and agreed to be limited and created of and concerning the said —, hereditaments, and premises, or such of the same trusts, intents, and purposes, powers, provisoes, agreements, and declarations as are now subsisting undetermined and capable of taking effect; And to, for, or upon no other use, trust, intent, or purpose whatsoever. (*Add covenant by the husband with the trustees that he and his wife have not nor has either of them incurred*). IN WITNESS, &c.

CONVEYANCE  
BY FINE IN  
PURSUANCE  
OF ARTICLES.

*Testatum.*

Declaration  
that fine shall  
enure

To the use of  
the trustees up-  
on the trusts of  
the settlement.

LEASEHOLDS OF  
A FEMALE  
INFANT.



ARTICLES *previously to the MARRIAGE of a MINOR. The intended HUSBAND, who is of Age, COVENANTS, immediately after the Marriage, to ASSIGN LEASEHOLDS belonging to the INFANT INTENDED WIFE upon the Trusts of the Articles; and also, at his DECEASE, or on BANKRUPTCY or INSOLVENCY, to REPAY a PECUNIARY PORTION which he receives on the Marriage. Short POWERS to LEASE, SELL, and INVEST in LAND; VARY FUNDS, and GIVE DISCHARGES. Special POWER to DISCHARGE and APPOINT TRUSTEES (a).*

Parties.

**T**HIS INDENTURE, made the — day of —, 18—,  
BETWEEN [*intended husband*], of &c., of the first part;

Remarks on  
the precedent in  
the text.

(a) This precedent claims attention for the extreme conciseness of its provisions. It often happens that settlements upon marriage comprise property, the value or amount of which is so inconsiderable as to require that the expense, and therefore the length, of the instrument should be brought within the narrowest possible compass; and since few of the ordinary clauses can be entirely omitted without inconvenience, the only material curtailment that the instrument admits of is in the language of those clauses. Such, indeed, is the numerical preponderance of conveyancing transactions affecting small properties, over those which relate to large ones, that any collection of precedents embracing the latter only must necessarily be of very limited utility. The present form, however, has another peculiarity besides that of unusual brevity. The power of appointing new trustees, it will be perceived, authorizes the donee not merely to supply vacancies, but enables her to discharge any incapable or retiring trustee, without exercising the power of new appointment; and to appoint new trustees in addition to, as well as in substitution for, the existing trustees; making these two acts wholly distinct and independent, agreeably to a suggestion *ante*, Vol. 6, p. 488. A power of this nature, however, is not calculated for indiscriminate adoption, as it gives a larger discretion to the donee of the power than it would always be prudent to intrust to the owner of a limited interest. The donee here be-

[*intended wife*], of &c., spinster, (an infant of the age of nineteen years and upwards), of the second part; and [*trustees*], of &c., of the third part. WHEREAS a marriage is intended shortly to be solemnized between the said [*intended husband*] and [*intended wife*]. AND WHEREAS, by an indenture of lease (*recite lease granted to intended wife's father for — years, at a nominal rent, and the will of the lessee bequeathing the premises to the intended wife, and death of testator &c., in the usual manner*). AND WHEREAS the said [*intended wife*] is also entitled to a legacy or money portion of 500*l.* under the said will of her said late father, deceased, payable to her at her majority or on her marriage. AND WHEREAS it has been agreed that the said [*intended husband*] shall enter into a covenant to assign and assure the said leasehold premises immediately after the solemnization of the said intended marriage, in the manner hereinafter expressed; And also, that the said legacy or sum of 500*l.* shall be paid to the said [*intended husband*] immediately after the said intended marriage, on his entering into the covenant for the repayment thereof hereinafter contained. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the firstly hereinbefore mentioned agreement, and in consideration of the said intended marriage, it is hereby agreed and declared between and by the said parties hereto, and particularly the said [*intended husband*], for himself, his heirs, executors, and administrators, *Doth* hereby covenant with the said [*trustees*], their executors and administrators, that, in case the said intended marriage shall take effect, he the said [*intended husband*] will immediately after the solemnization thereof, at his own costs and charges, effectually assign and assure the said leasehold — and premises unto the said [*trustees*], their executors and administrators, for all the residue now unexpired of the term of — years, granted by the said recited indenture of lease upon the trusts following, that is to say, *Upon trust*, from time to time to pay the rents and profits arising

LEASEHOLDS OF  
A FEMALE  
INFANT.

Recital of marriage intended.

—Agreement  
for settlement.

*Testatum.*

Covenant by intended husband to assign leaseholds upon the trusts following.

ing the settlor herself the objection does not apply, as the power may be regarded merely as a modification of her original dominion, for the retention of which to any extent she is of course at liberty to contract.

LEASEHOLDS OF  
A FEMALE  
INFANT.

Separate use of  
wife for life.

And after her  
decease, in trust  
as the wife shall  
appoint;

And in default,  
—to the chil-  
dren of wife.

from the said premises unto the said [*intended wife*], or permit her to receive the same during her life for her separate use, free from the control and debts of her said intended or any future husband, and so that, during her said intended or any future coverture, she shall have no power to alien or anticipate the same; And after the decease of the said [*intended wife*], then as to, for, and concerning the said leasehold — and premises, *In trust* for such person or persons, (being or not being objects of the trust next hereinafter contained) (*b*), for such interest or interests, and in such manner in all respects, as the said [*intended wife*] by any testamentary writing, to be attested by one witness or more, shall appoint; and in default of such appointment, *In trust* for the child or children of the said [*intended wife*] who shall attain the age of twenty-one years or marry, if more than one, in equal shares, and his, her, and their executors or administrators, or respective executors or administrators; AND it is hereby declared, that the trustees for the time being may, after the decease of the said [*intended wife*], apply the income arising from the presumptive share or respective shares of the minor and unmarried child and children for the time being, if any, or any part thereof, in and towards his, her, and their maintenance and education, in such manner in all respects as such trustees shall think proper; And the unapplied income (if any) shall be accumulated for the benefit of the child or children from whose presumptive share or respective shares the same may have arisen; but the trustees shall be at

Remark on the  
mode of fram-  
ing the general  
power.

(*b*) These words are added from abundant caution, in order to exclude the doctrine of the case of *Bristow v. Ward*, 2 Ves. jun. 336, where a power in marriage articles, general in its terms, was held to be restrained to the objects of the immediate limitation over. But clearly it is not necessary to use negative words to prevent this construction, for, since there is no incongruity between a power of appointing to one class of objects, and a gift over in default to another and more confined class, it is clear that a power to appoint to *any* person or persons would not be cut down by a gift over to individuals of a designated character, as children, relations, &c. See *Parkes v. White*, 11 Ves. 209; *Barford v. Street*, 16 Ves. 135; 1 Chance on Powers, 144; Sugd. Pow. 5th ed. 473. However, it is well to keep the doctrine in view in framing such powers, especially in the case of executory trusts.



liberty nevertheless to apply the said accumulated fund in and for the subsequent maintenance and education of such minor and unmarried child or children respectively; And in case there shall be no child of the said [*intended wife*] who shall attain the age of twenty-one years or marry, Then as to the said leasehold premises or so much thereof as shall not have been appointed by the said [*intended wife*], under her power hereinbefore contained, *In trust* for the person or persons who at the time of the decease of the said [*intended wife*] would be entitled to her personal estate under the statutes of distributions in case she died intestate and without having been married (c), and if more than one in the like pro-

LEASEHOLDS OF  
A FEMALE  
INFANT.

In default of  
children, in  
trust for the  
next of kin of  
wife, exclusively  
of any husband.

(c) In creating trusts of this nature, some points require attention, which it may be useful to notice. The construction which is given to a trust for the next of kin of a female, as if she had died "sole and unmarried," makes the latter words import "*without leaving a husband;*" and this is the sense in which, no doubt, they are ordinarily used; because the object of such trusts is to exclude the husband, and him only: whereas, to construe the words as meaning *without having been married*, would extend to the exclusion of children. In the case of *Hardwick v. Thurston*, 4 Russ. 380, one third in certain monies was bequeathed to M. (the wife of E.) for life, for her separate use, and after her decease, for such persons as would have been entitled thereto as her next of kin at the time of her decease, "under the statute for the distribution of intestate's personal estates, if she had died *sole* and intestate, to the utter exclusion of the said E., as her administrator, or by right of marriage or otherwise." Another third was given upon similar trusts, for the benefit of B., who was then unmarried. B. afterwards married, and died leaving an only child; and such child was held to be entitled under the trust in question, the expression being considered as used for the sole purpose of excluding the husband.

Remarks upon  
the trust for the  
next of kin of  
the wife.

It is observable, that in this case there was no prior trust for children. The existence of such a trust might possibly have influenced the construction; because, where property is given to the children of A. attaining twenty-one or marrying, (as in the precedent in the text), and in default of such children, to her next of kin, as if she had died *sole and unmarried*, according to the construction put on these words, (or rather, on the former of them), in *Hardwick v. Thurston*, the property might circuitously devolve to the husband himself, through a child who did not live to acquire a vested interest under the trust for children. For instance, the wife might die leaving a child surviving her, who afterwards might die a

Remarks upon  
*Hardwick v.*  
*Thurston.*

LEASEHOLDS OF  
A FEMALE  
INFANT.  
Power to lease.

Power to sell,

and invest purchase-monies in other lands.

portions, And upon or for no other trust, intent, or purpose whatsoever; *Provided also*, and it is hereby declared, that it shall be lawful for the trustees or trustee for the time being of this settlement, to demise from year to year, or for any term or number of years, at rack rent, the said leasehold premises hereby covenanted to be assigned, or any part thereof which may not have been sold under the power next hereinafter contained; *Provided also*, and it is hereby further declared, that it shall be lawful for the said trustees or trustee for the time being, during the continuance of the trusts hereby created, with the consent in writing of the said [*intended wife*] during her life, and after her decease, then of the proper authority of such trustees or trustee, (but without prejudice to any tenancies or leases which may have been created as aforesaid), to sell all or any part of the said leasehold — and premises in such manner as the said trustees or trustee shall think proper, and to assign the same unto the purchaser or purchasers thereof, or as he, she, or they shall direct; and to stand possessed of the monies arising from such sale or sales (after deducting the expenses incident thereto), Upon trust at any time or times thereafter, with such consent or of such proper authority as aforesaid, to invest the same monies in the purchase of any other leasehold hereditaments, or of any freehold or copyhold hereditaments, which hereditaments so to be purchased shall be conveyed and assured to

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minor and unmarried, which child, though not an object of the trust for children, would yet be entitled under the trust for next of kin; and consequently, on the death of such child, (possibly at an age preventing testamentary capacity otherwise to dispose of it), the property would devolve to his father, if then living, as his representative, and thus, the main scheme of the trust would be defeated. The practical hint which this view suggests is, that where the trust for the next of kin of a female, exclusively of any husband, is preceded by a gift in favour of her children by *any* husband, who shall attain a given age &c., it is proper, in framing such trust, to use the words *without having been married*; and where it is not so preceded, the expression should be *without leaving a husband*. The use of the former words in the latter instance is especially to be guarded against, because it would be attended with the extremely mischievous consequence of excluding children, if any, in favour of more remote relations; and, with all the anxiety of the Courts to avert such a consequence, evinced in *Hardwick v. Thurston*, the words would, it is evident, be wholly unmanageable.

the said trustees or trustee, their, his, or her heirs, executors, administrators, and assigns, and shall be held by them or him upon the same trusts as are hereinbefore declared concerning the said leasehold premises hereby covenanted to be assigned; And in case the hereditaments so purchased shall be of freehold or copyhold tenure, the same shall for all the purposes of this settlement be deemed to be personal estate; *Provided also*, and it is hereby further declared, that until such purchase or purchases as aforesaid shall be made, the said trust monies shall be invested by the said trustees or trustee for the time being, in their or his own names or name, in some or one of the Parliamentary funds of Great Britain, or at interest on real securities in England; and such trustees or trustee shall and may from time to time with such consent, or of such proper authority as aforesaid, vary and transpose the said funds and securities as often as occasion shall require and it shall be thought fit. **AND THIS INDENTURE FURTHER WITNESSETH**, that, in pursuance of the hereinbefore recited agreement in this behalf, and in consideration of the said intended marriage, and also in consideration of the sum of 500*l.*, which the said [*intended husband*], immediately after the solemnization of the said intended marriage, will receive as and for the marriage portion of the said [*intended wife*], his intended wife, from [*executors*], the acting executors named in the said will of the said [*father*], deceased, he the said [*intended husband*] *Doth* hereby, for himself, his heirs, executors, and administrators, covenant and agree with the said [*trustees*], their executors or administrators, that, in case the said intended marriage shall take effect, and in case the said legacy or sum of 500*l.* or any part thereof shall be paid to the said [*intended husband*] as aforesaid, Then and in such case the heirs, executors, or administrators of the said [*intended husband*] shall and will, at the expiration of three calendar months next after the decease of the said [*intended husband*], or in case in the lifetime of the said [*intended husband*], a fiat or commission of bankrupt shall be issued against him, under which he shall be found and declared a bankrupt, or in case the said [*intended husband*] shall take the benefit of any act of Parliament for the relief of insolvent debtors, Then and in either of such last-mentioned cases, that he the said [*intended hus-*

LEASEHOLDS OF  
A FEMALE  
INFANT.

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Trust for intermediate investment.

Further *testamentum*.

Covenant by husband to repay portion on decease, bankruptcy, or insolvency.

LEASEHOLDS OF  
A FEMALE  
INFANT.

Declaration of  
trusts of portion,  
when received.

Indemnities to  
persons paying  
trust-monies.

Power to ap-  
point new trus-  
tees.

*band*], his heirs, executors, or administrators, shall and will, immediately on such bankruptcy or insolvency (*d*), well and truly pay or cause to be paid unto the said [*trustees*], their executors or administrators, the said sum of 500*l.* of lawful money of Great Britain and Ireland, or such part thereof as the said [*intended husband*] shall so receive as the marriage portion of the said [*intended wife*], as aforesaid, without any deduction whatsoever; And it is hereby declared and agreed, that the said trustees or trustee for the time being shall stand possessed of the said sum of 500*l.*, or such part thereof as shall be paid to them or him under the covenant lastly hereinbefore contained, *Upon trust* to invest the same in their or his own names or name, in some or one of the Parliamentary stocks or funds of Great Britain, or at interest on real securities in England, with power from time to time, with the consent in writing of the said [*intended wife*] during her life, and after her decease, then in the discretion of the said trustees or trustee, to vary the stocks and securities as often as it shall be deemed expedient; And do and shall stand possessed of the said funds and securities and the dividends, interest, and annual produce thereof, upon the like trusts and for the like intents and purposes, (so far as the same shall be then subsisting and undetermined), as are hereinbefore declared concerning the said leasehold — and premises hereinbefore covenanted to be assigned, and the rents and profits thereof, or as near thereto as the nature of the property and other circumstances will admit of; and upon or for no other trust, intent, or purpose whatsoever. *Provided always*, and it is hereby declared, that every person paying any trust-monies to the trustees or trustee for the time being of this settlement, shall be exempt from all responsibility in respect of the application thereof. *Provided also*, and it is hereby further declared, that it shall be lawful for the said [*intended wife*], at any time during her life, whether covert or sole, and for her executors or administrators after her decease, during the continuance of the trusts hereby created, by any

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(*d*) In what cases and to what extent provisions of this nature are valid, is fully considered *ante*, p. 86.



LEASEHOLDS OF  
A FEMALE  
INFANT.

deed or deeds under her or their hand and seal, or respective hands and seals, either attested or not, upon the application in writing of any trustees or trustee of this settlement, or in the event of any trustees or trustee becoming incapable to act (e), to discharge such trustees or trustee from the trusts hereby created, and all obligation and responsibility in respect thereof; *And further*, that it shall be lawful for the said [*intended wife*], her executors or administrators as aforesaid, by any such deed or deeds as hereinbefore mentioned, to appoint any new trustee or trustees, either in the place of any discharged or deceased trustee or trustees, or as an additional trustee or trustees, as the case may require; And the trustees respectively so appointed shall have and be invested with the same or the like powers and authorities as if the trusts herein contained had been expressly reposed in them in and by these presents; and upon every such appointment the trust premises shall be transferred accordingly. *Provided nevertheless*, and it is hereby declared, that nothing herein contained shall authorize the discharge of the only continuing trustees or trustee for the time being, without the substitution of another trustee or trustees, so that there may be at least one trustee to carry on the trusts of these presents. *And lastly*, it is hereby declared that the trustees for the time being of this settlement shall not be responsible for the acts, deeds, or defaults of each other, or for any involuntary loss which may happen to the said trust premises while in their custody or power; and such trustees or trustee for the time being shall be at liberty to retain and to allow to each other all costs and expenses incurred in the execution of the trusts hereby created, or in relation thereto. IN WITNESS, &c.

Indemnities.

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(e) *Vide* a remark on the special framing of this power, *ante*, p. 274.

ASSIGNMENT OF  
LEASEHOLDS  
BY HUSBAND.

ASSIGNMENT *by the HUSBAND, after Marriage, in pursuance of a COVENANT in MARRIAGE ARTICLES, (last Precedent), and indorsed on the Articles.*

Parties.

In pursuance of the covenant in the within-written indenture, husband assigns to trustees,

**THIS INDENTURE**, made the — day of —, BETWEEN the within-named [*husband*], of the one part, and the within-named [*trustees*], of the other part, WITNESSETH, that, in pursuance of the within-contained covenant in this behalf, and in consideration of the within-recited marriage between the said [*husband*] and the within-named [*wife, by maiden name*], which has this day been solemnized, and of the within-mentioned marriage portion or sum of 500*l.*, which the said [*husband*] hath, previously to the execution of these presents, received with his said wife, as he doth hereby acknowledge, the said [*husband*], so far as he lawfully can or may, and by way of assurance only, and not by way of implied covenant or warranty, *Doth* by these presents assign and transfer unto the said [*trustees*], their executors, administrators, and assigns, All and singular the — and premises comprised in the within-recited indenture of lease with the appurtenances to the same belonging; And all the estate, right, title, interest, claim, and demand whatsoever, vested in or belonging to him the said [*husband*] by right of marriage or otherwise, in and to the said premises, together with the said indenture of lease, and the full benefit and effect thereof; *To hold* the same premises unto the said [*trustees*], their executors, administrators, and assigns for all the residue now unexpired of the said term of — years granted by the hereinbefore mentioned indenture of lease, and for all other the estate, term, and interest of the said [*husband*] therein, Upon the trusts, and for the intents and purposes, and subject to the powers and declarations expressed and contained in the within-written indenture concerning the same, and upon, for, and subject to which the same premises ought, according to the covenant therein contained, to be assigned and transferred; And upon or for no other trust, intent, or purpose whatsoever. (*Add covenant by the husband with the trustees, that he has not incumbered*). IN WITNESS, &c.

Upon the trusts of the within-written indenture.

SETTLEMENT on MARRIAGE under the Direction of the COURT of CHANCERY, the intended Wife being an Infant and a WARD of that Court. The intended HUSBAND is TENANT for LIFE, with POWER of JOINTURING, and also of APPOINTING PORTIONS to YOUNGER CHILDREN, which Powers he exercises, charging not only Lands, but a MONEY Fund to be laid out in Land. Term created under the Power for securing Portions. Amount of Portions regulated by the Number of Children. Larger Portions to Daughters in the event of there being no Issue male. Provisions for Maintenance and Advancement. The Fortune of the Lady consists of an UNDIVIDED MOIETY of certain Freehold Hereditaments, which is to be conveyed, at her Majority, to Trustees, UPON TRUST for SALE, with Power to JOIN in PARTITION. The Proceeds of the Sale are to be invested UPON TRUSTS for the intended HUSBAND and WIFE and the CHILDREN of the MARRIAGE; and, in default of CHILDREN, for the SURVIVING WIFE or HUSBAND, subject to a general Power of Appointment given to her. The intended Wife is also entitled to certain STOCK and MONIES standing in the Name of the ACCOUNTANT-GENERAL, out of which a Sum of Money is to be immediately RAISED for the HUSBAND, and the RESIDUE is to be SETTLED UPON TRUSTS, unless the Wife's Real Estate should not be assured to the Uses of the Settlement, in which case such RESIDUE is to be transferred to the HUSBAND. Indemnity to Purchasers, and other Usual Clauses. (Variation containing special Provision in the event of the Wife's dying without conveying her Real Estate, and such Real Estate devolving to an Object of the Trusts).

ON MARRIAGE  
OF WARD IN  
CHANCERY.

THIS INDENTURE, of three parts, made the — day of —, 18—, BETWEEN [*intended husband*], of &c., &c. Parties.

ON MARRIAGE  
OF WARD IN  
CHANCERY.

Recitals.  
—agreement for  
marriage.

—will of intend-  
ed husband's fa-  
ther.

Recital of in-  
tended hus-  
band's power to  
jointure;

quire, (the eldest son, and also a devisee named in the last will and testament of [name], late of —, deceased), of the first part; [*intended wife*], spinster, an infant of the age of nineteen years and upwards, (one of the two daughters and co-heiresses of [name], late of —, deceased); and [*intended wife's mother*], of &c., widow, (the mother and guardian of the said [*intended wife*]), of the second part; and [*trustees*], of &c., of the third part: WHEREAS a marriage is intended shortly to be solemnized between the said [*intended husband*] and [*intended wife*], with the consent of the said [*intended wife's mother*], her guardian. AND WHEREAS the said [*intended husband's father*], by his last will and testament in writing, duly executed for the devise of freehold estates, bearing date the — day of —, *did* give and devise all his — and hereditaments in the parish of —, in the county of —, and all other his real estates whatsoever in Great Britain and elsewhere, with their appurtenances, to the uses following; that is to say, to the use of the testator's eldest son, the said [*intended husband*], and his assigns, for his life, without impeachment of waste, with remainder to trustees upon trust to preserve contingent remainders, with remainder to the first and every other son of his said son [*intended husband*] successively in tail male, with remainder to the testator's second son [name] and his assigns, for his life, without impeachment of waste, with remainder to trustees upon trust to preserve contingent remainders, with remainder to the first and every other son of his said son [*second son*] successively in tail male, with divers remainders over; And the said testator declared that it should be lawful for his said sons [*intended husband*] and [*second son*], as and when they should respectively be entitled to the possession of his said estates, to grant and secure any rent charge or rent charges to be issuing thereout to any woman or women they should respectively happen to marry, as and for her and their jointure or jointures, and to be made payable at such respective times and place as should be deemed expedient, so as no such jointure did exceed the sum of one hundred pounds a-year for every one thousand pounds which should be received as the portion or portions of the woman or women to whom the same should be secured, and so as no such jointure did exceed a clear yearly rent of one thousand pounds of like lawful money, free from



all taxes, charges, and deductions; *And also* to grant or demise all or any part of the said estates to any person or persons for any term or number of years, *In trust* for raising in the usual manner such sum or sums of money as and for the portion or portions of his and their respective daughter or daughters who should live to attain the age of twenty-one years or be married, and for his and their respective younger son or younger sons who should live to attain the age of twenty-one years as thereafter mentioned, with maintenance in the meantime not exceeding the rate of three pounds per centum per annum, for his, her, or their portion or respective portions; that is to say, if there should be issue male and one younger or other child only, then any sum not exceeding five thousand pounds for his or her portion; but if issue male and two or more younger or other children, then any sum not exceeding the sum of ten thousand pounds for their portions, the same to be equally divided between or amongst them; *And* if but one or two daughters and no issue male, then any sum not exceeding ten thousand pounds; and if three or more daughters and no issue male, then any sum not exceeding fifteen thousand pounds for their portions; the said sum of ten thousand pounds if two daughters, and the said sum of fifteen thousand pounds if three or more daughters, to be shared equally amongst them; the said respective portions so to be provided to be payable to such child or children, being a daughter or daughters, at the age of twenty-one years or marriage, which should first happen, and being a younger son or sons at the age of twenty-one years; *And* with full power for the testator's said sons, if they should be respectively entitled to the possession of the said estates, to sell and exchange all or any part or parts thereof with the consent of his said trustees or the survivor of them, his heirs, executors, or administrators, so as the money to arise by any such sale or sales were paid to his said trustees or the survivor of them, his heirs, executors, or administrators, whose receipt should be a discharge for the same, to be invested by them or him in the purchase of other real estates, and, until such purchase could be made, the said trustees were empowered and directed to place out the said monies in government or real securities, and to pay the interest or dividends to the person or persons who would for the time being be en-

ON MARRIAGE  
OF WARD IN  
CHANCERY.

and charge portions for younger children.

—Powers of sale  
and exchange.

ON MARRIAGE  
OF WARD IN  
CHANCERY.

—Bequest of residue of personalty to be laid out in lands.

—Death of testator and probate of his will.

—That testator was seised of certain estates.

—That debts and legacies had been paid.

—That the residue of personalty had not been laid out.

titled to the rents of the lands to be purchased; *The* said real estates to be purchased, and also the said estates which should be taken in exchange as aforesaid, to be settled as near as might be to the like uses and in the like manner as the estates so sold or exchanged; *And* after bequeathing some pecuniary legacies, the said testator did thereby give and bequeath all the residue of his personal estate unto the said [*executors*], their executors and administrators, *In trust*, in the first place, to pay thereout all his debts, legacies, and funeral expenses, and all costs, charges, and expenses attending the execution of the trusts of his will, and to place out and invest the residue of his said personal estate in one or more purchase or purchases of lands, tenements, or hereditaments in that part of Great Britain called England; *And* the testator declared that the estates so purchased should be conveyed, settled, and assured to such uses, for such estate and estates, and in such manner as his real estates are thereinbefore devised; and he directed his executors in the meantime to place out the same at interest on real or government securities, or parliamentary funds, and to pay and apply the dividends and interest thereof in such manner as the rents and profits of the lands so to be purchased and settled would be applicable unto in case such purchase and settlement were made; *And* the said testator appointed the said [*executors*], executors of his said will. *AND WHEREAS* the said testator soon afterwards died without revoking or altering his said will, and the same was, on the — day of —, duly proved by the said executors in the Prerogative Court of Canterbury. *AND WHEREAS* the said [*testator*], the testator, at the time of the execution of his hereinbefore recited will and of his death, was seised in fee simple of certain messuages or tenements, and pieces or parcels of ground, in the parish of —, in the county of —, of the yearly value of five hundred pounds or thereabouts, and the said testator left no other real estate. *AND WHEREAS* all the debts and funeral expenses of the said testator, and the legacies given by his said will, have been paid and discharged. *AND WHEREAS* the residue of the personal estate of the said [*testator*], deceased, or any part thereof, hath not been laid out in the purchase of lands and hereditaments, pursuant to the directions of his said will, but such residue hath been invested in the purchase of £—, Three Pounds per centum

Reduced Annuities, which are now standing in the names of the said *[executors]*, *In trust* to be laid out in the purchase of real estates, pursuant to the direction of the said will of the said deceased *[testator]*. AND WHEREAS the said *[intended wife]*, as one of the two daughters and co-heiresses at law of her late father, the said *[father]*, deceased, is now seised or entitled in fee simple of or to an undivided moiety of certain manors, messuages, lands, and hereditaments, situate at —, in the county of —, hereinafter more particularly described, of the annual value of £—, or thereabouts; And the said *[intended wife]* is also entitled to the sum of £—, Three Pounds per centum Consolidated Annuities, and now standing in the name of the Accountant-General of the Court of Chancery, and placed to her account in a cause wherein the said *[intended wife]*, by —, her next friend, is plaintiff, and the said *[mother]*, guardian of the person and estate of the said plaintiff, the infant, and others are defendants, and which said sum of £— is at the present market price worth £— sterling, and she is also entitled to the sum of £—, being cash placed to the same account. AND WHEREAS, by an order of the said Court of Chancery, made in the said cause, bearing date the — day of — last, after taking notice (among other things) that the said *[intended husband]* had made proposals of marriage to the said *[intended wife]*, which had been accepted by her with the consent of the said *[mother]*, her guardian, *It was ordered* that it should be referred to Master — to inquire whether the marriage proposed between the said *[intended husband]* and *[intended wife]* was a fit and proper marriage; and, if the said Master should find that it was, the said *[intended husband]* was to be at liberty to lay proposals before him for a settlement to be made on such marriage. AND WHEREAS, in pursuance of the said order, the Master made his report, dated the — day of — last, and thereby certified that the said *[intended husband]* was of the age of twenty-four years or thereabouts, and that the said *[intended wife]* was of the age of nineteen years and upwards; And that the said *[intended husband]* was entitled to a considerable property under the will of his late father; And that the said *[intended wife]* was entitled to the property therein mentioned; And also that proposals for a settlement on the said *[intended wife]* and the issue of the intended marriage had

ON MARRIAGE  
OF WARD IN  
CHANCERY.

—That intended wife was entitled to an undivided moiety of certain lands;

And of certain stock and money standing in the name of the Accountant-General;

Order in Chancery referring proposals to the Master.

Master's report,

ON MARRIAGE  
OF WARD IN  
CHANCERY.

Stating the husband's proposals.

been laid before him by the said [*intended husband*], whereby he proposed that a clear yearly rent charge of one thousand pounds per annum might be secured to the said [*intended wife*], by way of jointure, and that, during the joint lives of the said [*intended husband*] and [*intended wife*] a yearly rent charge of three hundred pounds might be secured to her as pin money, and that the same annuities might be charged upon the estates in the parish of —, in the county of —, devised by the hereinbefore recited will of his said father, and also upon the said £—, Three Pounds per centum Reduced Annuities, arising from the personal estate of the said testator as aforesaid; *And* the said [*intended husband*] further proposed, in execution of his hereinbefore recited power in this behalf, to charge the same estates and the said £—, Three Pounds per centum Reduced Annuities, (subject to the said jointure), with portions for the younger children of the said intended marriage, in the manner following, that is to say, if there shall be any issue male and one or more younger child only, then to raise five thousand pounds for his or her portion; if there shall be issue male and two or more younger children, then to raise ten thousand pounds for their portions, to be equally divided amongst them; and if but one or two daughter or daughters and no issue male, then any sum not exceeding ten thousand pounds for her or their portion or portions, to be equally divided between them, if more than one; and if there shall be three or more daughters and no issue male, then fifteen thousand pounds for their respective portions, to be equally divided amongst them; *And* that the said portions for younger children shall be a vested interest in them respectively, the sons' shares at majority, and the daughters' shares at majority or the day of marriage, and be then paid in case the said [*intended husband*] shall be then dead, and, if not, at the death of the said [*intended husband*]; *And* further proposed to covenant, that, on the said [*intended wife*] attaining the age of twenty-one years, he would concur with her if she consented, and that he would use his utmost endeavours to procure her concurrence, in conveying to trustees all her said real estates to which she was then entitled; *In trust* to sell the same and invest the produce thereof in real or government securities, in the names of trustees, *Upon trust* to pay the interest and dividends to



the said [*intended husband*] for his life, and at his decease to secure two hundred pounds a-year to the said [*intended wife*] for her life, in addition to her jointure of one thousand pounds; and subject thereto, as to the principal, for securing additional provision for the children of the marriage, including the eldest son, in such manner and in such proportions as they the said [*intended husband*] and [*intended wife*] should jointly appoint; and in default of such appointment, then the same to be equally divided amongst them, the shares of sons to be paid at twenty-one, and of daughters at twenty-one or marriage, and to vest at those periods, with benefit of survivorship in case any die before their portions become vested; and until payment of the said portions, the interest to be paid to the guardians for their maintenance, with power for the trustees, in default of the parents' appointment, to advance the sons to the extent of half their respective portions; and in case no child should be entitled to a vested interest in the same portions, it was further proposed that the whole principal money to arise from the sale of her said real estate should go and be applied to such uses as the said [*intended wife*], whether covert or sole, shall appoint; and in default of appointment, and in case she should survive the said [*intended husband*], then the same to go to her; but if the said [*intended husband*] should survive, and there should be a failure of children as aforesaid, and in default of appointment, to go to the said [*intended husband*], his executors or administrators; And the said [*intended husband*] also proposed that so much of the said £——, Three Pounds per centum Consolidated Annuities should be sold as, with the cash in the Bank, would produce the sum of five thousand pounds, and the same should be paid to the said [*intended husband*], for his own use and benefit, on the day of his marriage with the said [*intended wife*]; And that the residue of the said £——, Three Pounds per centum Consolidated Annuities, should be transferred to the trustees, *In trust* that if the said [*intended wife*] should attain twenty-one years, and should convey her real estates to the uses aforesaid, then the trustees to transfer the said residue of the said £—— to such person or persons, and for such purposes, as the husband and wife should, after she should attain majority, appoint; and in default

ON MARRIAGE  
OF WARD IN  
CHANCERY.

of such appointment, to pay the interest to her during her life for her separate use; and after the death of the said [*intended wife*], if there should be no such appointment, or in case she dies under twenty-one, or if, having attained twenty-one, she, being requested by the trustees, should for the period of twelve months thereafter refuse or neglect to concur with her husband in conveying her said real estate, or, in case of his death, then if she alone for twelve months after such request refuse or neglect to convey such estate to the uses aforesaid, then forthwith to transfer the said residue of the said £——, Three Pounds per centum Consolidated Annuities, to the said [*intended husband*], or his executors or administrators; *And* that the usual powers to make partition of the said estates should be inserted in such settlement; *And* in case any trustee should die or refuse to act, to nominate and appoint any new trustee or trustees in lieu of such so dying or refusing to act, with all other usual powers; *And* the said Master certified that the said [*intended husband*] being enabled to make such settlement as aforesaid, and the said [*mother*], the mother and only surviving guardian of the said [*intended wife*], approving of the said marriage, he was of opinion that the same was a fit and proper marriage to be entered into, and that the proposals laid before him in respect to the settlement to be made on such marriage were reasonable, fit, and proper to be carried into execution. *AND WHEREAS*, by an order made in the said cause the —— day of this instant ——, *It was ordered* that the said Master's report be confirmed; *And* that the proposals therein mentioned should be carried into execution by proper articles or settlement, to be made agreeably thereto, with the approbation of the said Master; *And* that, upon the execution of the said articles or settlement by all proper parties, as the Master should direct, the said [*intended husband*] should be at liberty to intermarry with the said [*intended wife*]; and that so much of the said £——, Three Pounds per centum Consolidated Annuities, standing in the name of the Accountant-General to the infant's [*intended wife's*] account, should be sold, as, with the sum of £—— cash in the Bank in that cause, would raise the sum of five thousand pounds; *And* that the same should be paid to the said [*intended husband*] for his own

—Order of Court confirming the Master's report, and allowing the marriage.

use and benefit immediately after his marriage; and that the residue of the said £—— should be transferred to the said [*trustees*], the trustees, upon the trusts of the said articles or settlement. AND WHEREAS the said Master hath approved of these presents as being proper articles or settlement for carrying the aforesaid proposals into execution, testified by his signing his name in the margin hereof. NOW THIS INDENTURE WITNESSETH, that, in consideration of the said intended marriage, and in pursuance of the hereinbefore recited order of the Court of Chancery, and in consideration of the sum of ten shillings of lawful money of Great Britain and Ireland, paid by the said [*trustees*] to the said [*intended husband*] at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, *He*, the said [*intended husband*], *Doth*, by these presents, grant, bargain, sell, and demise unto the said [*trustees*], and their executors, administrators, and assigns, ALL THAT [*parcels*], And the reversion, &c.; TO HAVE AND TO HOLD the said —, and all and singular other the hereditaments and premises hereinbefore expressed to be hereby demised, with their appurtenances, unto the said [*trustees*], their executors, administrators, and assigns, from and immediately after the solemnization of the said intended marriage, for and during the full end and term of ninety-nine years from thence next ensuing and fully to be complete and ended, if the said [*intended husband*] and [*intended wife*] shall jointly so long happen to live (*a*), *Upon the trusts* nevertheless and for the several intents and purposes hereinafter expressed concerning the same, that is to say, *Upon trust (for raising pin money, ut ante, p. 215)*. AND THIS INDENTURE FURTHER WITNESSETH, that, in consideration of the said intended marriage, and in further pursuance of the hereinbefore recited order of the Court of Chancery, and for carrying the same into execution, and also in consideration of the portion or fortune of the said [*intended wife*], agreed to be paid or settled as hereinafter mentioned, *He*, the said [*intended husband*], in pursuance and exercise of the said

ON MARRIAGE  
OF WARD IN  
CHANCERY.

—That Master  
had approved  
of the settle-  
ment.

*Testatum.*

Husband de-  
mises lands to  
trustees.

*Habendum.*

Upon trust for  
raising pin mo-  
ney.

Further testa-  
tum.

Intended hus-  
band, by vir-  
tue of his pow-

(*a*) This term being determinable with the joint lives of the intended husband and wife, of course is derived out of the husband's estate for life, and is not created under his power.

ON MARRIAGE  
OF WARD IN  
CHANCERY.

er, appoints a rent charge to his intended wife by way of jointure.

power and authority to him given in and by the hereinbefore recited will of the said [*testator*], deceased, and by force and virtue thereof, and of all other powers and authorities him enabling in that behalf, *Doth*, by these presents, grant, limit, appoint, secure, and confirm unto the said [*intended wife*], his intended wife, and her assigns, from and after his death, for and during the term of her natural life, in case the said intended marriage shall take effect and she shall survive the said [*intended husband*], one yearly rent charge or sum of 1000*l.* of lawful money of Great Britain and Ireland, free and clear of and from all taxes, charges, and deductions whatsoever, to be issuing and payable by and out of, and to be charged and chargeable upon *All* and singular the said — hereditaments and premises hereinbefore expressed to be hereby demised, the same yearly rent charge or sum of 1000*l.* to be in full for her jointure, and in lieu, bar, and satisfaction of and for the whole dower and thirds at common law or by custom, freebench, or widow's portion, which the said [*intended wife*] can or may or otherwise might have or claim, of, in, to, or out of all and every or any of the said freehold and copyhold or customary hereditaments, whereof or whereunto the said [*intended husband*] now is, or at any time or times during the said intended coverture between them shall be, seised or entitled for any estate of freehold, or copyhold of inheritance, or to which dower or freebench is incident (*b*), such yearly

Modes by which dower may be excluded under stat. 3 & 4 Will. 4, c. 105.

(*b*) This declaration is rendered comparatively unimportant, though not wholly inoperative, by the late act of 3 & 4 Will. 4, c. 105, (stated *post*, Vol. 10, p. 244), which has placed the dower of widows, to whom it applies, under the absolute dominion of the husband. The statute affords four modes by which the owner of freehold lands may exclude from dower a wife whose marriage with him was subsequently to the 1st of January, 1834.

1st. By an absolute disposition of the lands by deed or will.

2nd. By a declaration in the conveyance of the lands to the husband, or in any deed executed by him.

3rd. By a devise of any lands out of which the wife would be entitled to dower or "of any estate or interest therein;" which, unless a contrary intention is declared, prevents dower from attaching on *any* land of the husband.



rent or sum of 1000*l.* to be paid and payable in equal portions, quarterly, to her the said [*intended wife*], or her assigns, at or in the Common Dining Hall of Lincoln's Inn, in the county of Middlesex, between the hours of two and

4th. By a testamentary provision out of lands not liable to dower, or out of personal estate expressed to be in satisfaction of dower, or indeed by *any* demonstration of intention to exclude the dower, contained in a will duly executed for the devise of freehold lands.

The last requisition shews that the exclusion of the dower, by whatever means effected, is regarded as the disposition of an interest in freehold lands, and such unquestionably it is; for even if the testator does not devise the lands which he exonerates from dower, still the exoneration operates *pro tanto* as a gift to the person to whom the land devolves by descent, *i. e.* the heir. There is one case (and perhaps the only one) in which the wife's ante-nuptial contract would exclude her from dower, which her husband himself never could have deprived her of. Such case is where the husband is an infant at the time of the marriage, and dies during his non-age, and consequently when incapable of excluding the dower not only by deed but also by will, for the exclusion can be effected (we have seen) only by such a will as is sufficient for the devise of freehold lands. Perhaps, even in other cases, the dower-clause in the precedent in the text will not be wholly disused, (as rather hastily suggested in another place, *post*, Vol. 10, p. 244); since it shews the exclusion of the dower to be the result of positive contract with the wife herself, and relieves the husband from the necessity of inserting any excluding declaration in his conveyances or will, or otherwise protecting his real representatives against the dowress's claim.

However, it must be confessed that comparatively little inconvenience attends dower, now that the right to it may be relinquished by a married woman without a fine. It cannot be doubted that dower falls within the general terms of sect. 77 of stat. 3 & 4 Will. 4, c. 74, stated *post*, which enables a married woman, by any deed in which her husband concurs, and acknowledged in the manner prescribed by the act, "to dispose of, release, surrender, or *extinguish any estate* which she alone, or she and her husband in her right, may have in any lands of any tenure," the word "*estate*" being by a previous explanatory section declared to extend to "*any interest, charge, lien, or incumbrance in, upon, or affecting lands either at law or in equity.*" The junction of the wife, however, is only requisite where the marriage was anterior to the 2nd of January, 1834; for the dower of a woman subsequently married would be (as already shewn) effectually excluded by the husband's absolute disposition of the lands either by deed or will.

ON MARRIAGE  
OF WARD IN  
CHANCERY.

Power of dis-  
tress.

four of the clock (*c*), upon the four most usual days of payment in the year, that is to say, the twenty-fifth day of March, the twenty-fourth day of June, the twenty-ninth day of September, and the twenty-fifth day of December, in every year, the first payment thereof to be made on such of the said days as shall first happen after the decease of the said [*intended husband*], which said yearly rent charge of one thousand pounds does not exceed the sum of one hundred pounds a-year for every one thousand pounds to be received as the portion of the said [*intended wife*] (*d*); *And*, in further pursuance and exercise and by force and virtue of the powers and authorities aforesaid, *He*, the said [*intended husband*], *Doth*, by these presents, grant, direct, limit, and appoint, that, if it shall happen that any quarterly portion of the said yearly rent charge of one thousand pounds, or any part of any such quarterly portion, shall be unpaid by the space of fourteen days next after any of the aforesaid days whereon the same ought to be paid as aforesaid, then and so often it shall be lawful for the said [*intended wife*], and her assigns, into and upon the said — and hereditaments hereby charged or made chargeable with the said yearly rent charge of one thousand pounds, or into or upon any part thereof, to enter and distrain for all arrears of the same yearly rent charge, *And* the distress and distresses then and there found to take, lead, drive, and carry away, and impound, and in pound to detain, keep, or otherwise to sell and dispose thereof, according to due course of law, until the said [*intended wife*], and her assigns, shall be thereby fully satisfied the said yearly rent charge, and all arrears thereof, and all costs and expenses occasioned by the nonpayment thereof, at the days and times aforesaid; *And*, in further pursuance and exercise and by force and virtue of the powers and authorities aforesaid, the said [*intended husband*] *Doth*, by these presents, further grant, direct, limit, and appoint, that,

Power of entry.

(*c*) Where the power of entry requires that the rent charge should have been previously demanded, it is convenient to limit the hours of payment, as otherwise attendance must be given at the place of payment from sunrise until sunset of the day on which it becomes due.

(*d*) See the subject of powers of jointuring fully treated of, Sugd. Pow. 5th ed. 540; 1 Chance on Powers, 180; 1 Rep. Husb. and Wife, 492.

in case any quarterly portion of the said yearly rent charge or sum of one thousand pounds, or any part of such quarterly portion, shall happen to be unpaid by the space of twenty-eight days next after any of the aforesaid days on which the same ought to be paid as aforesaid, being first lawfully demanded, then and so often it shall be lawful for the said [*intended wife*] and her assigns, into and upon the said — and hereditaments hereby charged and made chargeable as aforesaid, or into and upon any part thereof in the name of the whole, to enter, and the same to hold and enjoy, and to receive the rents and profits thereof and of every part thereof for her and their own use and benefit, until she and they shall therewith be fully satisfied all arrears of the said yearly rent charge as shall grow due during such times as she the said [*intended wife*], or her assigns, shall continue in possession of the premises after such entry as aforesaid (e). AND THIS INDENTURE FURTHER WITNESSETH, that, in consideration of the said intended marriage, and of all and singular other the premises, *He* the said [*intended husband*], in pursuance and exercise of the power and authority to him given in and by the said will of the said deceased [*testator*], and by force and virtue thereof, and of all other powers and authorities him enabling in this behalf, *Doth*, by these presents, charge and make chargeable *All and singular* the — hereditaments and premises which shall be purchased with the proceeds of the said £—, Three Pounds per centum Consolidated Annuities, now standing in the names of the said [*executors*] as aforesaid, subject to the trusts of the said will of the said [*testator*], deceased, as aforesaid; and in the meantime, and until such purchase shall be made, doth charge and make chargeable the same sums, and the dividends, interest, and produce thereof respectively, with the payment of the said yearly rent charge or sum of one thousand pounds, so as aforesaid granted to the said [*intended wife*] for her life, after the decease of the said [*intended husband*], in case the said intended mar-

ON MARRIAGE  
OF WARD IN  
CHANCERY.

Further *testa-*  
*tum*.

Intended hus-  
band charges  
lands to be pur-  
chased and trust  
fund in the  
meantime with  
the jointure.

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(e) It will be perceived, that no term is created for securing the rent charge, the intended husband having no authority under his father's will to limit a term for *this* purpose. Quære, whether the reservation of a right of entry was authorized?

ON MARRIAGE  
OF WARD IN  
CHANCERY.

Further *testa-  
tum*.

Intended hus-  
band, in pursu-  
ance of his  
power, demises  
lands to trus-  
tees.

*Habendum* for  
six hundred  
years, to com-  
mence from de-  
cease of hus-  
band, for rais-  
ing portions for  
younger chil-  
dren.

In case there  
shall be only  
one such child  
to raise 5000*l*.

riage shall take effect, at such and the same days and times, and in such and the same manner as the same yearly rent charge is hereinbefore appointed to be paid as aforesaid. AND THIS INDENTURE FURTHER WITNESSETH, that, in consideration of the said intended marriage, and in further pursuance of the hereinbefore recited order of the Court of Chancery, and also in consideration of ten shillings of lawful money aforesaid, paid by the said [*trustees*] to the said [*intended husband*], he the said [*intended husband*], in pursuance and exercise of the power and authority to him given by the hereinbefore recited will of the said [*father of intended husband*], deceased; and by force and virtue thereof, and of all other powers and authorities him enabling in that behalf, DOTH, by these presents, grant and demise, limit and appoint, unto the said [*trustees*], their executors, administrators, and assigns, *All and singular* the said — hereditaments and premises hereinbefore expressed to be hereby demised for the term of ninety-nine years, and to be charged or made chargeable with the said yearly rent charge of one thousand pounds as aforesaid, with their and every of their appurtenances; And the reversion and reversions, remainder and remainders, rents and profits thereof, and of every part thereof; To HAVE AND TO HOLD the said —, and all and singular other the hereditaments and premises lastly hereinbefore expressed to be hereby demised, with their appurtenances, unto the said [*trustees*], their executors, administrators, and assigns, from and immediately after the decease of the said [*intended husband*], in case the said intended marriage shall take effect, for and during the term of six hundred years from such decease thence next ensuing and fully to be complete and ended, *Upon the trusts*, and for the intents and purposes, and subject to the powers, provisoes, declarations, and agreements hereinafter expressed concerning the same, that is to say, in case there shall be issue of the body of the said [*intended husband*] on the body of the said [*intended wife*], his intended wife, to be begotten, an eldest or only son, and only one other child, then *Upon trust* that they, the said [*trustees*], or the survivor of them, his executors, administrators, or assigns, do and shall, after the decease of the said [*intended husband*], but subject, and without prejudice,



to the raising and payment of the said yearly rent charge of one thousand pounds so granted to the said [*intended wife*] for her life as aforesaid, and to the powers and remedies hereby given for securing the same, by demise, sale, or mortgage of the said — hereditaments and premises comprised in the said term of six hundred years, or of a competent part thereof, for all or any part of the same term, or by such other ways and means as to the same trustees respectively shall seem meet, raise or borrow and take up at interest the sum of five thousand pounds of lawful money aforesaid, for the portion of such child not being an eldest or only son, and do and shall pay the same to such one child at the age or time hereinafter mentioned; *And*, in case there shall be issue of the body of the said [*intended husband*] on the body of the said [*intended wife*], his intended wife, to be begotten, an eldest or only son, and two or more other children, *Then* do and shall, after the decease of the said [*intended husband*], (but subject, and without prejudice, as aforesaid), by the ways and means aforesaid, raise or borrow and take up at interest the sum of ten thousand pounds of like lawful money, for the portions of such two or more children other than and except an eldest or only son, and do and shall pay and divide the same sum of ten thousand pounds unto and between or amongst such two or more equally, share and share alike, at the ages or times hereinafter mentioned, the said portion and portions to belong to and be an interest vested in such child or children respectively, for whom a portion or portions is or are hereby provided, being a son or sons, at his or their age or respective ages of twenty-one years, or being a daughter or daughters, at her or their age or respective ages of twenty-one years, or day or respective days of marriage, which shall first happen; *But, nevertheless*, to be paid and payable at the respective times hereinafter mentioned, that is to say, the portion or portions of such child or children, being a son or sons, to be paid to such of them who shall be under the age of twenty-one years at the death of the said [*intended husband*], when and as he or they shall respectively attain the age of twenty-one years, and to such of them as shall attain that age in the lifetime of the said [*intended husband*], immediately after his decease; *And* the portion or portions of such of the said children as

ON MARRIAGE  
OF WARD IN  
CHANCERY.

In case there shall be two or more younger children, to raise 10,000*l*.

ON MARRIAGE  
OF WARD IN  
CHANCERY.

Clause of survivorship and accruer.

shall be a daughter or daughters, to be paid to such of them as shall be under the age of twenty-one years and be unmarried at the time of the death of the said [*intended husband*], when and as she or they shall respectively attain the age of twenty-one years or be married, which shall first happen; and to such of them as shall attain that age, or be married, in the lifetime of the said [*intended husband*], immediately after his decease. *Provided always*, and it is hereby declared and agreed, that if any such child, being a daughter, shall die under the age of twenty-one years and unmarried, or if any such child, being a son, shall die, or become an eldest or only son, and by virtue thereof, and of the limitations contained in the hereinbefore recited will of the said [*testator*], deceased, shall be in the possession of or become entitled to the rents and profits of the said — and hereditaments hereinbefore expressed to be hereby demised, before he shall attain the age of twenty-one years, then the portion or sum of money hereby provided for each such daughter so dying unmarried, and of each such son so dying, or becoming an eldest or only son as aforesaid, shall, from time to time, go and accrue to the survivors or survivor, or others or other of the said children, (other than and except an eldest or only son), and be equally divided amongst such survivors and others of them, (if more than one), share and share alike; and the same shall become vested interests in and be payable to him, her, or them, at such respective ages, days, and times, and shall go in the same manner to such surviving and other child or children as is hereby declared touching his, her, or their original portion or portions respectively; and such benefit of survivorship or accruer shall extend as well to the surviving or accruing as to the original shares. *Provided always*, that no one child shall by reason of any such benefit of survivorship or accruer be entitled to more, including his or her original portion, than the sum of five thousand pounds; *And upon this further trust*, that they the said [*trustees*], or the survivor of them, his executors, administrators, or assigns, do and shall in the meantime, after the decease of the said [*intended husband*], and until the portion or portions hereby intended for such child or children as aforesaid shall respectively become payable out of the rents and profits of the said hereditaments

Until portions are payable, interest thereon to be raised for maintenance.

ON MARRIAGE  
OF WARD IN  
CHANCERY.

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and premises comprised in the said term of six hundred years, (but subject and without prejudice as aforesaid), raise for the maintenance and education of the same child or children respectively such yearly sum or sums of money as to them the said trustees respectively shall seem meet, so as such yearly sum or sums of money do not exceed the interest of the same portion or portions respectively, at and after the rate of five pounds per centum per annum; *And* do and shall pay the same sum or sums so to be raised unto the guardian or guardians of such child or children, to be by him, her, or them applied in and for the maintenance and education of the same child or children respectively (*f*); the said sum or sums for maintenance and education to be paid half-yearly, at or upon the twenty-fifth day of March and the twenty-ninth day of September in every year, by equal portions, the first payment thereof to be made on such of the said days as shall next happen after the decease of the said [*intended husband*]. *Provided always*, that no such sale or mortgage as is lastly hereinbefore mentioned shall be made, until some or one of the said portions shall become payable by virtue of these presents, unless with the consent, in writing, of the said [*intended husband*]; *And upon this further trust*, if there shall be no issue male of the body of the said [*intended husband*] on the body of the said [*intended wife*], his intended wife, to be begotten, or, being such, if all such issue male shall fail before any of them shall attain the age of twenty-one years, and if there shall be one or more daughter or daughters of the said intended marriage. Then that they the said [*trustees*], or the survivor of them, their or his executors, administrators, or assigns, do and shall (but subject and without prejudice to the raising and payment of the said yearly rent charge of one thousand pounds so granted to the said [*intended wife*] for her life as aforesaid, and to the powers to her given for securing the same, and also subject and without prejudice to such of the trusts hereinbefore declared concerning the said term of six hundred years (if any) as may become necessary to be performed,) raise by all or

In default of issue male, portions of larger amount to be raised for daughters.

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(*f*) It is usual, and seems in general to be advisable, to enable the trustees to apply it themselves if they think proper, *ut ante*, p. 231.

ON MARRIAGE  
OF WARD IN  
CHANCERY.

If one or two  
daughter or  
daughters, to  
raise 10,000*l*.

If three or more  
15,000*l*.

Proviso direct-  
ing the applica-  
tion of surplus  
rents.

any of the ways and means aforesaid, for the portion or portions of such daughter or daughters respectively, the sum or sums of money following, (that is to say), if there shall be but one or two such daughter or daughters, the sum of ten thousand pounds to be paid to such one daughter, or equally divided between such two daughters, as the case shall happen; *And* if there shall be three or more such daughters, then the sum of fifteen thousand pounds, equally to be divided amongst them, share and share alike; which sum or sums of money so to be raised for the portion or portions of the daughter or daughters of the said intended marriage, in case of there being such failure of issue male as aforesaid, shall vest in and be paid to the same daughter or daughters respectively, at such time or times, with such benefit of survivorship or accruer to and amongst them, if more than one, and with such provision for maintenance as is or are hereinbefore provided for the daughter or daughters of the said intended marriage, in the event of there being an only son of the same marriage, or as near thereto as contingencies will admit of; *Provided* that no one daughter nor any two daughters of the said intended marriage shall, under the trusts of the said term of six hundred years for raising original and accruing shares, have more than the sum of ten thousand pounds for her or their portion or portions, nor shall any three or more such daughters have more than the aggregate sum of fifteen thousand pounds for their portions; *Provided also*, and it is hereby further declared and agreed, that they the said [*trustees*], or the survivor of them, their or his executors, administrators, or assigns, do and shall permit and suffer the person or persons who shall or may for the time being be entitled to the reversion and remainder of the said hereditaments comprised in the said term of six hundred years expectant upon the determination thereof, until the several portions hereby directed to be raised shall become due and payable by virtue of the trusts aforesaid, to receive the surplus of the rents and profits of the same hereditaments, after payment of such yearly sum or sums of money as is or are hereinbefore directed to be raised and paid for the maintenance and education of such child or children respectively as aforesaid. (*Proviso for cesser ut ante*,



p. 256 (g)). AND THIS INDENTURE FURTHER WITNESSETH, that, in consideration of the said intended marriage, and of all and singular other the premises, and for the better securing the payment of the said portion or portions hereinbefore provided for the child or children of the said intended marriage (except an eldest or only son as aforesaid), he the said [*intended husband*], in further pursuance and exercise of the said power and authority to him given as aforesaid, and by force and virtue thereof, and of all other powers and authorities him in anywise enabling in that behalf, *Doth* by these presents charge and make chargeable ALL and singular the lands, tenements, and hereditaments which shall be purchased with the aforesaid capital sum of £—, Three Pounds per centum Reduced Annuities, and in the meantime and until such purchase shall be made, *Doth* charge and make chargeable the same capital sum, and the dividends, interest, and produce thereof, (subject nevertheless and without prejudice to the said yearly rent charge of one thousand pounds as aforesaid), with the payment of all and every the portion and portions and maintenance hereinbefore provided and directed to be raised under the trusts of the said term of six hundred years, for all and every the child and children of the said [*intended husband*] on the body of the said [*intended wife*], his intended wife, to be begotten (other than and except an eldest or only son) as aforesaid, at such and the same days and times, and in such and the same manner in all respects as the same portion or portions and maintenance are hereinbefore appointed to be raised and paid as aforesaid. AND the said [*intended husband*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*trustees*], their executors, administrators, and assigns, in manner following, that is to say, that he the said [*intended husband*], now at the time of the execution of these presents, hath in himself good right, full power, and lawful and absolute authority to appoint the said yearly rent charge or sum of 1000*l.* hereinbefore limited

ON MARRIAGE  
OF WARD IN  
CHANCERY.

Further *testa-*  
*tum.*

Intended husband charges lands to be purchased and trust fund with the portions.

Covenants by intended husband that he has power to appoint jointure and charge portions.

(g) Where the jointure term is created under a power, it is often requisite to pay particular attention to the penning of the proviso for cesser, on account of the power having in some particulars prescribed the form of such proviso.

ON MARRIAGE  
OF WARD IN  
CHANCERY.

And for further  
assurance.

And for pay-  
ment of any de-  
ficiency in join-  
ture rent charge.

to the said [*intended wife*], his intended wife, for her life, in case she shall survive him; *And* to demise and appoint respectively the said — and hereditaments hereinbefore expressed to be hereby demised and appointed for the said several terms of ninety-nine years and six hundred years; *And also* to charge the lands and hereditaments to be purchased with the aforesaid capital sum of £——, Three Pounds per centum Reduced Annuities, and until such purchase to charge the same capital sum with the payment of the said yearly rent charge of one thousand pounds, and of the portion and portions hereinbefore provided for the child and children of the said intended marriage (except an eldest or only son), in the manner aforesaid, according to the true intent and meaning of these presents; *And further*, that he the said [*intended husband*], and all and every other person and persons claiming from, by, under, or in trust for him, or from, by, through, or under the said [*testator*], deceased, shall and will, from time to time, and at all times hereafter, at the request of the said [*trustees*] or the survivor of them, their or his executors, administrators, or assigns, but at the costs and charges of him the said [*intended husband*], his heirs, executors, or administrators, make, do, and execute, or cause and procure to be made, done, and executed, all and every such further and other lawful and reasonable act and acts, deed and deeds, conveyances and assurances whatever, for the further, better, and more effectually establishing, ratifying, and confirming these presents, and the grants, limitations, and appointments, demises and charges, hereinbefore expressed to be hereby made, according to the true intent and meaning hereof, as by the said [*trustees*], or the survivor of them, their or his executors, administrators, or assigns, or their or his counsel in the law, shall be reasonably devised or advised and required; *And moreover*, that if by any means whatsoever the said [*intended wife*], or her assigns, after the death of him the said [*intended husband*], shall in any one year be prevented from receiving the clear yearly rent charge or sum of one thousand pounds of lawful money aforesaid, by and out of the hereditaments hereby charged and made chargeable therewith as aforesaid, Then and in such case, and so often as the same shall happen, the heirs, executors, or administrators of him the said [*intended husband*], shall and

will pay and make good the deficiency therein unto her the said [*intended wife*] and her assigns: *Provided always*, and it is hereby declared and agreed, that nothing herein contained shall extend or be construed to extend to abridge, defeat, or affect the power by the hereinbefore recited will of the said [*testator*], deceased, given to his said sons of selling and exchanging all or any part or parts of his said estates thereby devised, so as such sales or exchanges, during the continuance of the trusts of the said term of ninety-nine years, be made with the consent of the said [*trustees*] or the survivor of them, his executors or administrators, and so that the estates to be purchased with the money arising by any such sale, as well as the estates to be taken upon any such exchange, be settled and assured to, for, upon, and subject to such and so many of the uses, trusts, ends, intents, and purposes, powers, provisoes, charges, limitations, and declarations, in and by the said will of the said [*testator*], deceased, and also in and by these presents, limited, expressed, and declared or directed, of and concerning the estates so to be sold or conveyed in exchange, as shall be then subsisting, undetermined or capable of taking effect (*h*). AND THIS INDENTURE FURTHER WITNESSETH, that, in consideration of the said intended marriage, and in further pursuance of the hereinbefore recited order of the Court of Chancery, so far as relates to the real estate of the said [*intended wife*], he the said [*intended husband*] doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*trustees*], their heirs, executors, and administrators, That in case the said intended marriage shall take effect, and the said [*intended wife*] shall live to attain the age of twenty-one years, the said [*intended husband*] shall

ON MARRIAGE  
OF WARD IN  
CHANCERY.

Power of sale  
and exchange in  
will not to be  
prejudiced.

Further testa-  
tum.

Covenant by in-  
tended husband  
at the majority  
of the wife to

(*h*) It should seem that a tenant for life who has charged his estate with an annuity is not thereby incapacitated from exercising a power of leasing, except so far as it may be in derogation of his previous act of disposition, (*vide Long v. Rankin*, stated *ante*, Vol. 2, p. 313, 2nd ed.); and the principle would apply *à fortiori* to a power of sale and exchange. The clause in the text authorizes the husband to exercise his power, with the consent of the trustees of the present settlement, of which settlement the trustees of the will ought to have notice, in order that their conveyance of lands, purchased or exchanged under the power, may be framed accordingly.

Power of sale  
not affected by  
charge created  
by tenant for  
life.

ON MARRIAGE  
OF WARD IN  
CHANCERY.

join with her in  
conveying her  
real estate.

and will immediately, or as soon as conveniently may be after the said [*intended wife*] shall attain her said age of twenty-one years, at the costs and charges of the said [*intended husband*], join and concur with her if she will consent, *And also* shall and will use his utmost endeavours to procure her to join and concur with him, in such good and sufficient conveyances and assurances in the law, as the said [*trustees*], or the survivors or survivor of them, or their or his heirs, or their or any of their counsel in the law shall require, advise, or direct, and tender to be made and executed, for the conveying and assuring unto the said [*trustees*] and their heirs, *All that* one undivided moiety or half-part (the whole into two equal parts to be divided) of her the said [*intended wife*] of and in *ALL THAT* (*describe parcels*), and all and singular other the hereditaments situate, lying, and being at —, in the said county of —, or elsewhere, whereof or whereto the said [*father of intended wife*], the late father of the said [*intended wife*], or any other person or persons in trust for him, was or were, at the time of his death, seised or entitled for any estate of freehold or inheritance, in possession, reversion, remainder, or expectancy, together with their and every of their appurtenances; *To HAVE AND TO HOLD* the said undivided moiety, so agreed to be conveyed and assured, of and in the said — and hereditaments, unto and to the use of them the said [*trustees*], their heirs and assigns, for ever, *Upon trust* that they the said [*trustees*], or the survivors or survivor of them, their or his heirs or assigns, do and shall, immediately or as soon as conveniently may be after the same shall be vested in them or him as aforesaid, make sale and absolutely convey and dispose of the said undivided moiety and hereditaments, which shall be so conveyed to them or him as aforesaid, either entirely or in parcels, unto any person or persons whomsoever, who shall or may be willing to become the purchaser or purchasers thereof, or as he, she, or they shall direct, for the most money and best price or prices that can at the time of such sale or sales be reasonably had or gotten for the same, either by public sale or auction, or by private contract; with liberty, if deemed expedient, to make any special stipulations or conditions as to the evidence of title to be required by any purchaser or purchasers, and also to purchase in the said hereditaments, or any part thereof, at any

*Habendum.*

Upon trust for  
sale.



auction or auctions, and to rescind or vary the terms of any contract or contracts for sale that may have been entered into; *And* do and shall lay out and invest all and singular the monies arising from such sale or sales as soon as conveniently may be after the same shall come to the hands of the said trustees or trustee (with the consent, nevertheless, of the said [*intended husband*] and [*intended wife*], his intended wife, or the survivor of them, or the executors or administrators of such survivor, testified by some writing under their, his, or her hands or hand), in or upon government or real securities, at interest, in the names or name of them the said trustees, or the survivor or survivors of them, their or his executors, administrators, or assigns; *And* do and shall stand and be possessed of, and interested in the same securities so to be purchased, upon the several trusts, for the several intents and purposes, and subject to the several powers, provisoes, declarations, and agreements hereinafter expressed concerning the same, that is to say, *Upon trust* to permit and suffer or authorize and empower the said [*intended husband*], or his assigns, during his life, to receive the dividends, interest, and produce thereof, from time to time, as the same shall arise and become payable, for his or their own use and benefit; *And* immediately after the decease of the said [*intended husband*], in case the said [*intended wife*] shall happen to survive him, Then, UPON TRUST, from time to time, to permit and suffer or authorize and empower the said [*intended wife*], or her assigns, during her life, to receive the dividends and produce of so much of the securities so to be purchased as aforesaid, as shall at the time of the decease of the said [*intended husband*] yield and produce a clear annual income of two hundred pounds, for her and their own use and benefit; *And* immediately after the decease of the [*survivor*] of them the said [*intended husband*] and [*intended wife*], as to, for, and concerning the last-mentioned part or share of the said securities, *And also* immediately after the decease of the said [*intended husband*], as to, for, and concerning the residue and surplus of the same securities, *Upon trust* that they the said [*trustees*], or the survivors or survivor of them, their or his executors, administrators, or assigns, do and shall assign, transfer, and make over the same securities respectively, as and when the several trusts thereof hereinbefore declared

ON MARRIAGE  
OF WARD IN  
CHANCERY.

Trust to invest  
monies arising  
from sales.

Interest to be  
paid to husband  
for life.

And then to  
raise 200*l.* a-  
year for wife;  
and subject  
thereto,

Capital in trust  
for the children  
as the parents  
shall jointly ap-  
point, and in de-  
fault of appoint-  
ment,

ON MARRIAGE  
OF WARD IN  
CHANCERY.

In trust for the  
children equal-  
ly.

shall respectively end and determine, unto or between and amongst all and every or such one or more child or children of the said [*intended husband*] on the body of the said [*intended wife*], his intended wife, to be begotten (*i*), in such parts, shares, and proportions, manner and form, at such age or ages, days and times, and with such maintenance in the meantime until the assignment or transfer thereof, and subject to such provisoes and limitations over, (such provisoes and limitations to be for the benefit of some or one of the same children), as they the said [*intended husband*] and [*intended wife*], his intended wife, at any time or times, during their joint lives, by any deed or deeds, or writing or writings, with or without power of revocation, to be by both of them sealed and delivered in the presence of and attested by two or more credible witnesses, shall jointly direct or appoint; And in default of and subject to such direction or appointment, then do and shall assign, transfer, and make over all the same securities so to be purchased as aforesaid, or so much thereof of which there shall be no such direction or appointment as aforesaid, unto and amongst all and every the child and children of the body of the said [*intended husband*] on the body of the said [*intended wife*], his intended wife, to be begotten, share and share alike, if more than one, and if there shall be only one such child, then the whole to such one child; the share or shares of such of them as shall be a son or sons to be transferred to him or them at his or their age or respective ages of twenty-one years, and the share or shares of such of them as shall be a daughter or daughters to be transferred to her or them at her or their age or respective ages of twenty-one years, or day or respective days of marriage, which shall first happen, subject nevertheless to the trusts hereinbefore declared concerning the same securities during the lives of the said [*intended husband*] and [*intended wife*], his intended wife, respectively: *Provided always*, nevertheless, and it is hereby declared and agreed, that in case any such child or children, being a son or sons, shall attain his or their age or respective ages of twenty-one years, or being a daughter or daughters shall attain her or their age or respective ages of twenty-one years,

Declaration as  
to the period of  
the vesting of  
children's  
shares.

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(i) As to extending powers of this description to issue more remote than children, see *ante*, p: 138.

or be married before such age in the lifetime<sup>1</sup> of the said [*intended husband*] and [*intended wife*], his intended wife, or of the survivor of them, then and in every such case, and from thenceforth, all and every such right and interest, or rights and interests, of such son or sons so attaining the said age of twenty-one years, and of such daughter or daughters so attaining the like age, or marrying before such age, of, in, and to the said securities so to be purchased as aforesaid, or any part thereof, whereof no such direction or appointment shall be made as aforesaid, shall respectively be and be considered as a vested interest or vested interests in the same child or children respectively, and shall be transmissible as such to his, her, or their executors or administrators, notwithstanding the death of such child or children in the lifetime of the said [*intended husband*] and [*intended wife*], his intended wife, or the survivor of them (*k*). *Provided also*, that if any such child, being a son, shall die under the age of twenty-one years, or being a daughter shall die under the age of twenty-one years and unmarried, then and in any such case the portion hereby provided by and out of such securities for each such son so dying under that age, and each such daughter so dying under that age and unmarried, (other than what shall have been actually advanced and paid for the advancement of such son and sons as hereinafter is mentioned), and whereof no direction or appointment shall be made as aforesaid, shall from time to time go and accrue to the survivors or survivor, and others or other of the same children, and be equally divided between or amongst such survivors and others of them if more than one, share and share alike; And the same shall be transferable at such respective days and times, and shall go in the same manner to such surviving and other child or children as is hereby declared touching his, her, or their original portion or portions respectively, and such benefit of such survivorship or accruer shall extend as well to the surviving or accruing as to the original shares; *And upon this further trust*, that they the said trustees respectively, or the survivors or sur-

ON MARRIAGE  
OF WARD IN  
CHANCERY.

Clause of survivorship and accruer.

Provision for maintenance during the mi-

(*k*) This clause is unnecessary, as it merely expresses the effect of the previous trust. It may be useful, however, in declaring the intention of the parties on a point on which, among unprofessional persons, misapprehension often exists. It will be observed, that, in this precedent, there is no hotchpot clause, *ut ante*, p. 229.

ON MARRIAGE  
OF WARD IN  
CHANCERY.

minority of sons  
and the minori-  
ty and discover-  
ture of daugh-  
ters.

Provision for ad-  
vancement in  
favour of sons  
limited to a  
moiety of their  
portions.

vivor of them, their or his executors, administrators, or assigns, do and shall, (nevertheless subject and without prejudice to such direction or appointment as aforesaid), in the mean time, after the respective deaths of the said [*intended husband*] and [*intended wife*], his intended wife, or the death of the said [*intended husband*] alone, (as the case may be), and until the said securities so to be purchased as aforesaid shall respectively become transferable by virtue of the trusts aforesaid, receive the clear yearly dividends and interest of the same securities, or of so much thereof as shall for the time being remain subject to any of the trusts hereinbefore declared, as and when the same dividends and interest shall from time to time become due and payable, and do and shall pay the same into the hands of the guardian or guardians for the time being of such child or children, whose portion or respective portions shall not then have become transferable as aforesaid, in order that the same dividends and interest may be by such guardian and guardians respectively applied for and towards the respective maintenance and education of the same child or children, and, if more than one, according and in proportion to their several presumptive rights and shares in the principal of the same securities. *Provided always*, nevertheless, that, notwithstanding the trusts hereinbefore contained touching the said securities so to be purchased as aforesaid, it shall be lawful for the said [*trustees*], and the survivor and survivors of them, their or his executors, administrators, and assigns, at their or his discretion, at any time or times after the respective deaths of the said [*intended husband*] and [*intended wife*], or the death of the said [*intended husband*] alone, (as the case may be), (but subject and without prejudice to such direction and appointment as aforesaid), to sell and dispose of, or call in and receive, any part of the securities hereby intended for the portion or portions of such son or sons as aforesaid, not exceeding in the whole for each such son one half of the portion or portions which such son or sons respectively shall then presumptively be entitled to from such securities under the trusts aforesaid, and pay and apply the produce thereof for the placing out of such son and sons respectively in any profession, business, or employment, or for his, her, or their instruction therein, or for the procuring for him or them a commission in the army, or otherwise for his or their advancement or benefit in the



world, notwithstanding his, her, or their portion or portions shall not then have become absolutely vested, due, and transferable. *Provided always*, and it is hereby declared and agreed, that if there shall not be any child of the body of the said [*intended husband*] on the body of the said [*intended wife*], his intended wife, to be begotten, or there being such, if all of them shall die before any of them, being a son or sons, shall attain the age of twenty-one years, or being a daughter or daughters shall attain the like age or be married, then and in such case they the said [*trustees*], or the survivors or survivor of them, their or his executors, administrators, or assigns, do and shall transfer and make over all and singular the securities which shall be so purchased, or so much thereof, whereof there shall not be such direction or appointment or advancement as aforesaid, in manner following, that is to say, in case the said [*intended husband*] shall die in the lifetime of her the said [*intended wife*], his intended wife, *Then* do and shall transfer and make over the same, from and immediately after the death of the said [*intended husband*] and such failure of children as aforesaid, unto her the said [*intended wife*], her executors, administrators, or assigns, to and for her or their own use and benefit; *But* in case the said [*intended wife*] shall die in the lifetime of the said [*intended husband*], then do and shall, immediately after the death of him the said [*intended husband*], and such failure of children as aforesaid, transfer and make over the same unto such person or persons, upon such trusts, and to and for such ends, intents, and purposes, and under and subject to such provisoes, directions, and declarations, and in such parts, shares, and proportions, manner, and form, as the said [*intended wife*], at any time or times during her life, notwithstanding her coverture, by any writing or writings, with or without power of revocation, signed by her in the presence of and attested by two or more credible witnesses, or by her last will and testament in writing, or a codicil thereto, or any writing purporting to be or in the nature of her last will and testament or codicil, to be by her signed or published in the presence of and attested by the like number of credible witnesses, shall direct or appoint; *And*, in default of such direction or appointment, then do and shall stand possessed of the same securities, or so much thereof, whereof no such direction or appointment

ON MARRIAGE  
OF WARD IN  
CHANCERY.

Ultimate trust  
on failure of  
children of the  
marriage.

In case the wife  
survives her  
husband, then  
for her abso-  
lutely.

But if the wife  
dies in the life-  
time of her hus-  
band, then in  
trust as she shall  
appoint.

And in default  
of appointment  
in trust for the  
husband.

ON MARRIAGE  
OF WARD IN  
CHANCERY.

Power to trustees with consent to vary securities.

Until the sale, rents to be paid to persons entitled to the income of the produce.

Trustees' receipts to be good discharges.

Power to join in making partition.

or advancement shall be made, *In trust* for the said [*intended husband*], his executors, administrators, and assigns. *Provided also*, and it is hereby declared and agreed, that it shall be lawful for the trustees or trustee for the time being of these presents, at any time or times hereafter, (with the consent in writing of the said [*intended husband*] and [*intended wife*] his intended wife, or of the survivor of them, or of the executors or administrators of such survivor), to sell or call in the securities on which any purchase monies or other trust monies shall for the time being happen to be invested, and from time to time to place out or invest the monies therefrom arising at interest in or upon a mortgage or mortgages of freehold or copyhold hereditaments to be situate in England, or in the purchase of stock in any of the public funds, subject to the trusts aforesaid; *And so*, from time to time, with such consent as aforesaid, to vary or change the securities in manner aforesaid, as often as they the same trustees respectively shall think fit. *Provided always*, and it is hereby further declared and agreed, that in the meantime, and until such sale or sales shall be made of the said undivided moiety and hereditaments hereinbefore agreed to be sold as aforesaid, the rents and profits of the same moiety and hereditaments shall, from time to time, go and be paid unto such person and persons as would for the time being, under and by virtue of the trusts hereinbefore declared, be entitled to have and receive the dividends, interest, and produce of the said securities, in or upon which the monies to arise by such sale or sales as aforesaid are hereinbefore directed and agreed to be laid out and invested, anything hereinbefore contained to the contrary thereof notwithstanding. *Provided also*, and it is hereby further declared and agreed, that when any sum or sums of money shall be paid into the hands of the trustees or trustee for the time being of these presents by any purchaser or purchasers, or other person or persons, the receipt and receipts of such trustees or trustee shall, from time to time, be an effectual discharge or effectual discharges to the person or persons paying the same for such sum or sums of money as in such receipt or receipts shall be expressed to be received, And such person or persons shall not be obliged to see to the application thereof. *Provided always*, and it is hereby declared and agreed, that in case it shall be deemed necessary or expedient to make partition of the hereditaments whereof

the said [*intended wife*] is seised of or entitled to an undivided moiety as aforesaid, at any time or times after she shall attain the age of twenty-one years, before the same moiety shall be sold pursuant to the trusts in this behalf hereinbefore contained, it shall be lawful to and for the said [*trustees*], or the survivors or survivor of them, their or his heirs or assigns, to join with the parties interested in the other undivided moiety of the same estates in making a partition or division thereof, and do all such acts and execute all such conveyances and assurances as shall be necessary for effectuating such partition or division, so as the hereditaments to be allotted or taken upon such partition as the specific part of the said [*intended wife*] of and in the said estates, so to be parted or divided, be thereupon conveyed to and vested in them the said trustees, respectively, and their heirs and assigns, upon, to, and for such and the same trusts, intents, and purposes, and subject to such and the same powers, provisoes, declarations, and agreements, as are hereinbefore expressed concerning the undivided moiety of the said [*intended wife*] of and in the real estates so to be parted and divided as aforesaid. (*Power to lease at any time before a sale under the trusts*). AND THIS INDENTURE YET FURTHER WITNESSETH, that, in consideration of the said intended marriage, and in pursuance of the hereinbefore recited order of the Court of Chancery (*l*), it is hereby declared and agreed, by and between the said parties hereto, *And* particularly the said [*intended wife*] (with the consent and approbation of her mother and guardian, the said [*intended wife's mother*], testified by her executing these presents, doth consent and agree, that so much of the aforesaid £—, Three Pounds per centum Consolidated Annuities, standing in the name of the Accountant General of the Court of Chancery, in the cause of — and —, to the plaintiff's [*intended wife's*] account, as, with the aforesaid sum of £—, cash in the Bank, will raise the sum of five thousand pounds sterling, be immediately, or as soon as may be after the solemnization of the said intended marriage, sold, with the privity of the said Accountant General; *And* that the said five thousand

Further *testamentum*.

Declaration of trusts of fund in court belonging to the intended wife.

The sum of 5000*l.* to be raised immediately for the husband.

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(*l*) As to the effect where the settlement differs from the proposals laid before and approved by the Master, *vide Willis v. Robinson*, 1 Dow, (New Series), 469.

ON MARRIAGE  
OF WARD IN  
CHANCERY.

Residue of fund  
settled upon  
trusts.

pounds so to be raised or made up shall thereupon be paid to the said [*intended husband*], his executors, administrators, or assigns, to and for his or their own use and benefit, and that the residue of the said £—— shall be transferred unto the said [*trustees*], *Upon the trusts*, and for the intents and purposes, and under and subject to the powers, provisoes, declarations, and agreements hereinafter expressed concerning the same, that is to say, *Upon trust*, until the said [*intended wife*] shall attain the age of twenty-one years, or shall die under that age, which shall first happen, to pay the dividends and annual produce arising from the said trust fund unto the said [*intended husband*], his executors, administrators, and assigns, or otherwise authorize and empower him or them to receive the same, for his or their own use and benefit; *And* in case the said [*intended wife*] should attain the age of twenty-one years, and should convey her real estate pursuant to the covenant hereinbefore contained, to the use and upon the trusts hereinbefore expressed concerning the same, then *upon trust* that they the said [*trustees*], their executors, administrators, or assigns, do and shall transfer and make over the said trust fund unto such person or persons as the said [*husband*] and [*wife*] (after she shall have attained the age of twenty-one years) shall, by deed, direct or appoint; and, in default of such direction or appointment, and in the meantime and until any such should be made, *Upon trust* to pay the dividends and annual produce arising from the said trust fund unto the said [*intended wife*], or otherwise authorize and empower her to receive the same during the term of her life, for her separate use and benefit, free from the control and debts of the said [*intended husband*], and of any future husband with whom she may intermarry; *And* after the decease of the said [*intended wife*], in case she shall attain the age of twenty-one years, and convey her real estate hereinbefore covenanted to be conveyed to the use and upon the trusts hereinbefore expressed concerning the same, and there shall be no joint direction and appointment as aforesaid, or in case the said [*intended wife*] shall die under the age of twenty-one years, then from and immediately after her decease, or if, having attained the age of twenty-one years, she, being requested by the trustees or trustee for the time being of these presents, shall, for twelve calendar months, refuse



or neglect (*m*) to join with the said [*intended husband*], her husband, in conveying, or, in case of his decease, shall,

ON MARRIAGE  
OF WARD IN  
CHANCERY.

(*m*) As it is now settled that the Court of Chancery has no authority to bind property of its infant ward by means of a settlement executed on marriage under the sanction of the Court, (*vide Simson v. Jones, ante, p. 40*), it follows that, in the present instance, if the wife should die without executing any conveyance in pursuance of the covenant in the articles, her heir would not be bound thereby. If, however, the heir were a child of the marriage, it is conceived that he would not be allowed to take any interest in the settled property without conforming to the articles. (*Vide ante, p. 49*). Where this is intended, however, it seems better to preclude all question by inserting such a declaration as the following:—

Covenant to settle not obligatory on the infant intended wife.

“ And it is hereby declared and agreed, that in case the said [*intended wife*] shall depart this life without having made and executed an effectual conveyance and assurance of the real estate whereof or whereto she is now seised or entitled, pursuant to the covenant hereinbefore contained, and in case such real estate or any interest therein shall then or at any time thereafter, by descent, devise, or otherwise, devolve or come to any person or persons who shall be an object or objects of the trusts hereinbefore contained, and if such person or persons, when of the age of twenty-one years, shall, for the period of twelve calendar months after being requested so to do by the trustees or trustee for the time being of these presents, or until his, her, or their decease, which shall first happen, refuse or neglect, at his, her, or their own costs, to convey and assure the said real estate of the said [*intended wife*] to the uses, upon the trusts, and for the intents and purposes, and subject to the provisoes and declarations hereinbefore expressed concerning the same, then and in such case it shall be lawful for the said trustees or trustee for the time being of these presents, from and after the expiration of the said period of twelve calendar months, or the decease of the person or persons so refusing or neglecting (as the case may be) to apply and dispose of the share, benefit, and interest which he or they respectively would be entitled to have and take in and to all and singular the said trust premises under or by virtue of the trusts hereinbefore contained; and the annual income arising therefrom, to and for the use and benefit of the person or persons

Clause imposing forfeiture on person refusing to convey real estate to the uses of the settlement.

ON MARRIAGE  
OF WARD IN  
CHANCERY.

for the said period after such request as aforesaid, refuse or neglect to convey her said real estate to the use and

who shall be prejudiced and damnified by such refusal or neglect of the person or persons to whom the said real estate shall devolve or come as aforesaid, in such and the same manner in all respects, (so far as the nature of the case will admit), and, if more than one, in such and the same proportions, as such persons respectively would have taken and been entitled to the real estate (or the produce of the real estate, as the case may be) of the said [*intended wife*], if the same had been duly conveyed and assured pursuant to the covenant hereinbefore contained."

It should be added, if the forfeited interest may prove to be of greater value than the real estate—

"And it is hereby declared, that this present provision shall not be limited and restrained to the indemnifying of the person or persons who shall be prejudiced or damnified by the non-execution of such conveyance and assurance as aforesaid, but such person or persons shall be entitled to the excess, if any, in the value of the property and interest which he or they shall take under the present provision, over and above the value of the property or interest which he or they would have taken under or by virtue of the conveyance and assurance hereinbefore covenanted to be made and executed."

Remarks upon  
the preceding  
clause.

The clause above suggested is adapted to the case of the real estate of a minor being covenanted to be settled upon trusts for the benefit of all the children of the marriage, other property being actually settled in a similar manner. It supposes the other property so settled to be personality. If the other property consisted of freeholds, which were limited to the children in tail, any clause, divesting the estate on the non-performance of the condition, would be of little efficacy, because the heir might, at any time before the actual divesting of his estate tail, free himself from the condition, by enlarging his estate tail to a fee simple, by means of an inrolled assurance, now substituted for a common recovery. (*Vide post*, Vol. 10, p. 51). In such case, the estate should be absolutely divested immediately on the majority of the tenant in tail, before he could do any act to bar the entail, and the trustees should be empowered to revest the estate in him on his making the required assurance within a specified time. It is obvious, that a clause of this nature ought not to be confined to the immediate heir of the wife, because such heir might die during minority, and the real estate might then devolve to another object of the trusts, as heir of the deceased child. The clause above suggested

ON MARRIAGE  
OF WARD IN  
CHANCERY.

upon the trusts hereinbefore expressed concerning the same, that from and immediately after the expiration of the said period of twelve calendar months, or the decease of the said [*intended wife*] (which shall first happen as aforesaid (n)), they the said [*trustees*], their executors, administrators, or assigns, do and shall stand possessed of the said residue of the said £——, Three Pounds per centum Consolidated Annuities, or so much thereof whereof there shall be no direction or appointment as aforesaid, and also the dividends which shall have accrued since the decease or majority of the said [*intended wife*], *In trust* for him the said [*intended husband*], his executors, administrators, or assigns, and to transfer and make over the same accordingly. (*Power to appoint new trustees, and indemnity clause*). IN WITNESS, &c.

ed would reach the last-mentioned heir, and also any child or children taking the lands under the will of their mother, the intended wife, who, in the event of her surviving her husband, would be enabled to devise them. Indeed, she might, in such case, sell or otherwise dispose of the lands in her life-time, and the alienee, though he might have notice of the articles, executed during the widow's minority, would not be bound by them. It will be remembered, however, that, if the husband and wife alien the lands covenanted by the articles to be settled, the conveyance is regarded as the act of the husband, whose covenant to settle (if adult at the time of the execution of the articles) was binding; and, therefore, the purchaser, taking under such conveyance with notice of the articles, would be a trustee for the persons entitled under them. (*Vide ante*, p. 33).

(n) As to the effect where parties, meaning to perform a covenant of this nature, convey to wrong uses, *vide Mathews v. Jones*, 2 Anst. 506.

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CONVEYANCE *by* LEASE and RELEASE *by* HUSBAND and WIFE (a) *in pursuance of a* COVENANT *in* MARRIAGE ARTICLES (*last precedent*), *indorsed on the Articles*.

RELEASE IN  
FEE BY HUSBAND AND WIFE  
IN PERFORMANCE OF  
ARTICLES.

**T**HIS INDENTURE, made the —— day of —— 18—, BETWEEN the within-named [*husband*] and [*wife*], his wife, lately [*maiden name*], spinster, of the one part, and the within-named [*trustees*], of the other part: WHEREAS the

Parties.

Recital that  
marriage was

(a) *Vide* stat. 3 & 4 Will. 4, c. 74, ss. 77, 79, 80, 84, 85, 86, stated *post*.

RELEASE IN  
FEE BY HUSBAND  
AND WIFE  
IN PERFORMANCE  
OF  
ARTICLES.

duly solemnized.

—That wife had attained twenty-one.

*Testatum.*

In pursuance of covenant, husband and wife convey.

And all the estate, &c.

*Habendum.*

marriage within mentioned to have been intended to be solemnized between the said [*husband*] and [*wife by maiden name*] was duly solemnized shortly after the execution of the within-written indenture. AND WHEREAS the said [*wife*] attained her age of twenty-one years on the — day of — last. AND WHEREAS the said [*trustees*] have applied to and requested the said [*husband*] and [*wife*] to make and execute a conveyance and assurance of the real estate of the said [*wife*], pursuant to the covenant of the said [*husband*] within contained: NOW THIS INDENTURE WITNESSETH, that, in compliance with such application and request of the said [*trustees*], and in pursuance and performance of the covenant of the said [*husband*] in that behalf contained in the within-written indenture, they the said [*husband*] and [*wife*] do and each of them doth by these presents grant, bargain, sell, and release unto the said [*trustees*] and their heirs (in the actual possession, &c.), All that one undivided moiety or equal half part (the whole into two equal parts to be considered as if divided,) of the said [*husband*] and [*wife*], his wife, in right of the said [*wife*], of and in all and singular the — and hereditaments situate, lying, and being at —, in the county of —, or elsewhere, whereof or whereto [*father of wife*], late of —, the late father of the said [*wife*] deceased, or any other person or persons in trust for him, was or were at the time of his death seised or entitled for any estate of freehold or inheritance in possession, reversion, remainder, or expectancy; And all other the real estate (if any) of the said [*wife*], mentioned and described or referred to in and by the covenant in this behalf within contained, with their and every of their appurtenances; And all the estate, right, title, interest, property, possession, benefit, claim, and demand whatsoever of them the said [*husband*] and [*wife*] respectively, in and to the said share and premises; TO HAVE AND TO HOLD the said undivided moiety or equal half part of the said — hereditaments and premises hereinbefore mentioned or referred to, and all other the premises hereby released or intended so to be, unto and TO THE USE of the said [*trustees*], their heirs and assigns, for ever, upon the trusts, and for the intents and purposes; and subject to the powers, provisoes, declarations, and agreements expressed and contained in and by the within-written indenture, or such of the same trusts,



powers, provisoes, declarations, and agreements as are now subsisting or capable of taking effect. And the said [*husband*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*trustees*] and their heirs, that he the said [*husband*] hath not, at any time or times heretofore, either alone or concurrently with the said [*wife*], his wife, made, done, or executed any act, deed, matter or thing whatsoever, by means whereof the said undivided share and premises hereby released or intended so to be, are or is charged, incumbered, or in any manner prejudicially affected in title, estate, or otherwise howsoever; And further, that the said [*husband*], and every person whosoever rightfully claiming any estate, right, title, or interest at law or in equity, in, to, or out of the said share, hereditaments, and premises, hereby released or intended so to be, or any part thereof, from, through, under, or in trust for him, will from time to time and at all times hereafter, upon every reasonable request, and at the costs and charges of the said [*husband*], his heirs, executors, or administrators, until the said hereditaments shall be sold and conveyed under the trusts hereinbefore mentioned or referred to, and afterwards at the costs and charges of the said [*trustees*], their heirs or assigns, make, execute, and perfect every such lawful and reasonable act, deed, conveyance or assurance in the law whatsoever, for more effectually granting, releasing, confirming, or otherwise assuring the said share, hereditaments, and premises, and every part thereof, unto and to the use of the said [*trustees*], their heirs or assigns, or in such other manner as they shall order or direct, as by the said [*trustees*], their heirs or assigns, or their or any of their counsel in the law, shall be reasonably advised and required; so as such further assurances, or any of them, shall not contain in them or imply any other or more general covenant or warranty than against the acts, deeds, and defaults of the person or persons who shall be required to make or execute the same, and so that the person or persons making such further assurances shall not for that purpose be compellable to go from his, her, or their usual place or places of abode. And the said [*wife*], so far as she lawfully can or may, doth hereby ratify and confirm all and singular the clauses, covenants, provisions, declarations, and agreements, expressed and contained in the within-written indenture. IN WITNESS, &c.

RELEASE IN  
FEE BY HUSBAND  
AND WIFE  
IN PERFORMANCE  
OF  
ARTICLES.

Covenants by  
the husband:

—that he has  
not incumbered.

And for further  
assurance.

Wife confirms  
provisions in the  
articles.

SHARE IN LE-  
GACY, &c.

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ASSIGNMENT *on Marriage of a* REVERSIONARY SHARE *of a* STOCK-LEGACY; *also of a* SHARE *in* RESIDUARY PERSONAL ESTATE. ASSIGNMENT *by the intended Husband of a* POLICY *of* ASSURANCE, *with the usual accompanying* LETTER *of* ATTORNEY. *Post-obit* COVENANT *by the Uncle of the intended Wife.* TRUSTS *for the* CHILDREN, *or more remote* ISSUE *of the Marriage, as the* PARENTS *or the* SURVIVOR *shall appoint; and, in default of* APPOINTMENT, *in* TRUST *for* CHILDREN *equally.* PROVISIONS *for* MAINTENANCE *and* ADVANCEMENT. POWERS *to* TRUSTEES *to* VARY SECURITIES *and* INVEST TRUST FUNDS *in the* PURCHASE *of* REAL ESTATE. EXTENSIVE DISCRETIONARY POWERS *to* TRUSTEES *to* MANAGE PURCHASES *and* SALES; *also to compound for and forego the Enforcement of* CLAIMS. COVENANTS *for Title, &c. by* HUSBAND *and* WIFE *respectively.* COVENANT *by the intended Husband and Wife to* SETTLE PROPERTY *devolving to the* WIFE *during* COVERTURE. CONCISE POWER *to* appoint new TRUSTEES. *One of the* Trustees, *who is a* Solicitor, *empowered to make* Professional Charges. (*Variation, extending such Power to Trustees for the Time being*).

Parties.

Recitals.  
—intended  
marriage;

—wills of the  
father and mo-  
ther of the in-  
tended wife;

THIS INDENTURE, made the — day of —, in the year of our Lord, 18—, BETWEEN [*intended husband*], of &c., of the first part; [*intended wife*], of &c., spinster, of the second part; [*uncle of intended wife*], of the third part; and [*trustees*], of &c., of the fourth part: WHEREAS a marriage is intended to be shortly solemnized between the said [*intended husband*] and [*intended wife*]. AND WHEREAS, under and by virtue of the last will and testament of [*father*], of &c., the late father of the said [*intended wife*], bearing date the — day of —, she the said [*intended wife*] is

absolutely entitled to one equal sixth part of the sum of 2700*l.*, Three Pounds per centum Consolidated Annuities, now standing in the names of [*executors*], executors of the said will, and which will become transferable on the decease of [*legatee for life*], to whom the dividends arising from the said fund were bequeathed for her life. AND WHEREAS the said [*intended wife*] is also absolutely entitled under the last will and testament of her mother [*name*], late of —, deceased, bearing date the — day of —, to one-fourth part or share of the general residue of her personal estate and effects thereby bequeathed, and the produce thereof; and the said [*intended wife*] may, in the events in the said will particularly mentioned, become entitled to some further share or interest in the said residuary property. AND WHEREAS, on the treaty for the said intended marriage, it was agreed that the said share so vested in her the said [*intended wife*], in the said legacy and residuary property, as well as all and any other vested and contingent interest of her the said [*intended wife*] of and in the residuary personal estate bequeathed by the said will of her said late mother as aforesaid, and any future fortune or property to which the said [*intended wife*] may hereafter become entitled, being of the value or amount hereinafter mentioned, should be settled upon the trusts and for the purposes hereinafter expressed concerning the same. AND WHEREAS, by a policy of assurance under the hands and seals of three of the trustees of the — Assurance Society, bearing date the — day of —, and numbered —, the sum of 1000*l.* was assured to be paid to the executors, administrators, or assigns of the said [*intended husband*] within three months after the decease of the said [*intended husband*], on payment by him in the meantime of the annual premium or sum of £—, on the — day of —, in each year. AND WHEREAS, on the treaty for the said marriage, it was also agreed that the said [*intended husband*] should assign the said policy unto the said [*trustees*], upon the trusts hereinafter expressed concerning the same; and that the said [*intended husband*] should also covenant to pay the said annual premium on the said policy, and also any further or additional premium or premiums which shall or may happen to become payable thereon, as is also hereinafter expressed. AND WHEREAS the said [*uncle*] is

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SHARE IN LEGACY, &c.

—agreement to settle.

Policy of life assurance.

Husband's agreement to assign policy.

Uncle's agree-

SHARE IN LE-  
GACY, &c.

ment to enter  
into *post-obit*  
covenant for  
payment of por-  
tion.

*Testatum.*

Assignment of  
intended wife's  
interests under  
the several wills  
of her parents.

And also the  
right, &c.

*Habendum.*

Further *testa-*  
*tum.*

Assignment of  
policy of assur-  
ance.

the uncle of the said [*intended wife*], and the treaty for the said intended marriage having been commenced and proceeded in with his entire sanction and approbation, he hath proposed and agreed to secure the payment of the sum of 1000*l.* as and for the marriage portion of the said [*intended wife*], to be payable at the time and in the manner and to be settled upon the trusts hereinafter expressed concerning the same. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the hereinbefore recited agreement in this behalf, and in consideration of the said intended marriage, she the said [*intended wife*], with the consent and approbation of the said [*intended husband*] (*a*), testified by his execution hereof, *Doth* by these presents assign, transfer, and set over, unto the said [*trustees*], their executors, administrators, and assigns, All that the undivided sixth part or share which, upon the decease of the said [*legatee for life*], will become transferable to her the said [*intended wife*], of and in the said 2700*l.* Three Pounds per centum Consolidated Annuities, now standing in the names of the trustees of the will of the said [*father*], her late father, deceased, as aforesaid, and also all and singular the shares and interest, whether vested or contingent, and whether in possession, reversion, remainder, or expectancy of her the said [*intended wife*], of and in the residuary estate and effects bequeathed by the hereinbefore recited will of the said [*mother*], her late mother, deceased, as aforesaid; *And all* the right, title, interest, claim, and demand of the said [*intended wife*], in, to, and upon the same shares and premises respectively; To HAVE, RECEIVE, AND TAKE the said several shares and premises hereinbefore assigned or otherwise assured unto the said [*trustees*], their executors, administrators, and assigns, upon the trusts hereinafter expressed concerning the same. AND THIS INDENTURE ALSO WITNESSETH, that, in pursuance of the said recited agreement in this behalf, and in consideration of the premises, he the said [*intended husband*] *Doth* by these presents assign, transfer, and set over

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(*a*) Sometimes the intended husband is made not merely to consent to, but to join in, the assignment of the personal property of his intended wife; which, however, is obviously incorrect, because, until the marriage, he has no interest.



unto the said [*trustees*], their executors, administrators, and assigns, ALL THAT the hereinbefore-mentioned policy of insurance, and all and every sum and sums of money which shall or may become payable by virtue thereof; And all the right, title, interest, claim, and demand of the said [*intended husband*] in, to, and upon the same; TO HAVE, RECEIVE, AND TAKE the said policy, money, and premises, lastly hereby assigned or otherwise assured unto the said [*trustees*], their executors, administrators, and assigns, upon the trusts herein-after expressed concerning the same. And the said [*intended husband*] Doth by these presents constitute and appoint the said [*trustees*], and the survivors and survivor of them, his executors or administrators, to be the attornies and attorney of the executors or administrators of the said [*intended husband*], in their names or otherwise, to receive the said sum of 1000*l.* and all other monies which shall become due by virtue of the policy of assurance hereinbefore assigned, and to give effectual discharges for the same; and on non-payment thereof respectively, or any part thereof, by action or suit or other proceeding at law or in equity, at the risk and costs of the said trust estate, to enforce payment of the same monies; and any attornies or attorney under or in the stead of the attornies or attorney hereby appointed, for all or any of the purposes aforesaid, from time to time to appoint or substitute, and such appointment or substitution from time to time at pleasure to revoke, and generally to act in the premises as fully and effectually as the executors or administrators of the said [*intended husband*] could themselves do. AND THIS INDENTURE ALSO WITNESSETH, that, in pursuance of the said recited agreement in this behalf, and in consideration of the premises, the said [*uncle*] doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*trustees*], their executors, or administrators, that, if the said intended marriage shall take effect, the heirs, executors, or administrators of the said [*uncle*] shall and will, within three calendar months from the day of the decease of him the said [*uncle*], pay unto the said [*trustees*], their executors, administrators, or assigns, or other the trustees or trustee for the time being of these presents, the sum of 1000*l.* of lawful money of Great Britain and Ireland, with interest thereon at the rate of 5*l.*

SHARE IN LEGACY, &c.

Letter of attorney to receive and recover the monies owing on the policy.

Further *testamentum*.

Uncle of intended wife covenants to pay 1000*l.* at his decease.

SHARE IN LEGACY, &c.

Declaration of trusts.

Until the marriage, in trust for parties respectively entitled.

Trusts for investment.

During the joint lives, for the separate and inalienable use of wife.

per centum per annum from the said time of the decease of the said [uncle], without any deduction or abatement whatsoever. AND IT IS AGREED AND DECLARED, that the said [trustees], their executors and administrators, or other the trustees or trustee for the time being of these presents, shall stand possessed of all the said trust funds and premises hereby assigned to them, or expressed or intended so to be (including therein the said policy of assurance), and also of the said sum of 1000*l.* so as aforesaid covenanted to be paid, upon the trusts hereinafter expressed concerning the same respectively; (that is to say), as to the said shares and premises hereby expressed to be assigned by the said [intended wife], in trust for the said [intended wife] until the solemnization of the said intended marriage; And as to the said policy of insurance hereby expressed to be assigned by the said [intended husband], *In trust* for the said [intended husband] until the solemnization of the said intended marriage; And after the solemnization thereof, *Upon trust* that the trustees and trustee for the time being of these presents do and shall lay out and invest all and every the principal sum and sums of money to become payable in respect of the shares and interests hereby assigned of the said [intended wife], under or by virtue of the several hereinbefore recited wills, and also the said sum of 1000*l.* hereinbefore covenanted to be paid, when and as the same shall be respectively received, in or upon some or one of the parliamentary stocks or funds of the United Kingdom, or upon mortgage of any freehold, copyhold or leasehold estates in England or Wales; or in case any such stocks, funds, or securities shall be transferred to the trustees or trustee in respect or on account of the said shares and premises, or any part thereof respectively, then *Upon trust* to stand possessed thereof (subject nevertheless to the power of changing securities hereinafter contained); And do and shall from time to time, during the joint natural lives of them the said [intended husband] and [intended wife], pay the dividends, interest, and annual income of all and singular the said stocks, funds, and securities respectively, and also the dividends, interest and annual income in the meantime arising from the shares and interests of the said [intended wife], under or by virtue of the several hereinbefore recited wills, unto

such person or persons as the said [*intended wife*] shall from time to time (notwithstanding her said intended coverture) by any writing or writings under her hand direct or appoint, but so as not to dispose of or affect the same by anticipation; And in default of and until any direction or appointment, and subject to any partial direction or appointment, do and shall pay the same to her the said [*intended wife*], for her sole and separate use, free from the control, debts, and engagements of him the said [*intended husband*], but without power of anticipation; And from and after the decease of either of them the said [*intended husband*] or [*intended wife*], *Upon trust* that the trustees or trustee for the time being of these presents do and shall thenceforth, during the natural life of the survivor of them, pay the said dividends, interest, and annual income unto such survivor, or his or her assigns; And as to the policy and premises hereinbefore assigned by the said [*intended husband*], *Upon trust* that they the said trustees or trustee do and shall lay out and invest the sum and sums of money to be received in respect thereof in or upon any such stocks, funds, or securities as aforesaid; and do and shall, during the natural life of the said [*intended wife*], in case she shall survive the said [*intended husband*], pay the dividends, interest, and annual income which shall arise from such stocks, funds, and securities unto the said [*intended wife*] or her assigns; And from and immediately after the decease of the survivor of them the said [*intended husband*] and [*intended wife*], then as to, for, and concerning all and singular the said trust funds and premises, and the dividends, interest, and annual income thereof, IN TRUST for the child or children of the said [*intended wife*] by the said [*intended husband*], and the issue of such child or children, or any or either of the said children and issue, exclusively of the other or others of them, (and as to the said issue, whether his, her, or their parents shall be living or dead), and for such interest and interests, in such shares, and with such restrictions and provisions, and generally in such manner in all respects for the benefit of the said child, children, or issue, or any or either of them, as the said [*intended husband*] and [*intended wife*], from time to time, during their joint lives, (and whether there shall be one object only of this power or more), by any deed or deeds duly executed, either containing or not con-

SHARE IN LEGACY, &c.

And after the decease of either, upon trust for the survivor.

Trust for investment of the monies arising from the policy of assurance; interest to be paid to wife for life.

After decease of the survivor of husband and wife,

In trust for the children or remoter issue of the marriage, as the husband and wife or the survivor shall appoint.

SHARE IN LEGACY, &c.

taining a power of revocation and new appointment, shall jointly direct or appoint; and in default of any such joint direction or appointment, and subject to any partial or incomplete direction or appointment, then as the survivor of them the said [*intended husband*] and [*intended wife*], from time to time, after the decease of the other of them, (and as to the said [*intended wife*], notwithstanding her coverture by any future husband), shall, by any deed or deeds duly executed, or by his or her last will and testament, or any codicil or codicils thereto respectively in writing, or any writing in the nature thereof, to be signed and published by such survivor in the presence of and attested by two or more credible witnesses, from time to time direct or appoint.

Power not to be exercised in favour of a son until twenty-one, nor of a daughter until twenty-one or marriage.

In default of appointment,

In trust for the children equally.

Clause substituting issue of

*Provided nevertheless*, that no child of the said [*intended husband*] by the said [*intended wife*] shall take an absolute interest under any such direction or appointment as aforesaid, until such child, being a son, shall attain the age of twenty-one years, or being a daughter shall attain that age, or marry with the previous consent in writing of her or their parents or surviving parent, or, if none, her guardians or guardian for the time being, which shall first happen (*b*); And in default of and subject to any such joint or sole direction or appointment as aforesaid, then as to, for, and concerning all and singular the trust funds and premises aforesaid, and the dividends, interest, and annual income thereof, *In trust* for the child or children of the said [*intended husband*] by the said [*intended wife*], who, being a son or sons, shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age, or marry under that age, with the previous consent in writing of her or their parents or surviving parent, or, if none, her guardians or guardian for the time being, which shall first happen, and if more than one such child, as tenants in common; And if there should

As to power not being exercisable in favour of minor sons or minor and unmarried daughters.

(*b*) The design of this clause, it will be observed, is to prevent the abuse of the power, sometimes practised, in making an absolute appointment to a child at a very early age and in precarious health, in order that, at the death of the child, the appointed fund may devolve to the father, who, on his taking out administration, would become entitled to the personal property of such deceased child. The remark applies equally to more remote issue, to whom, therefore, the clause might advantageously be extended.



be any child or children of the said [*intended husband*] by the said [*intended wife*] who shall die without acquiring an absolute interest in the said trust funds and premises, or any part thereof, but shall leave lawful issue living at his, her, or their death or respective deaths, Then such surviving issue of each child so dying as aforesaid shall, on the decease of his, her, or their said parent, be entitled (and if more than one as joint tenants) to the fund or share or respective shares to which his, her, or their said parent or respective parents would have been entitled under the trusts hereinbefore declared, if such parent had, immediately before his or her death, attained the age of twenty-one years. *Provided also, and it is hereby also agreed and declared,* that no child, children, or other issue of the said [*intended husband*] by the said [*intended wife*], taking under any appointment to be made as aforesaid, shall (unless it shall be so expressly provided in such appointment) be entitled to any unappointed part or interest of or in the said trust premises without bringing his, her, or their appointed share into hotchpot, and accounting for the same accordingly. *Provided also, and it is hereby also agreed and declared,* that if, at the decease of the survivor of them the said [*intended husband*] and [*intended wife*] there should be any child or children or other issue of the said intended marriage, who shall be absolutely or presumptively entitled to the said premises hereby settled, or any share or shares thereof, then and in such case (subject to any contrary direction or any such appointment or appointments as aforesaid) the dividends, interest, or annual income of the fund or share to which such child or children respectively shall for the time being be absolutely or presumptively entitled, or such part thereof as the trustees or trustee for the time being of these presents shall think proper, shall be applied for the maintenance and education of such child, children, or issue respectively; And it shall be lawful for the said trustees or trustee to apply the same to the purposes aforesaid, or, in their or his discretion, to pay the same to the guardian or guardians for the time being of such child, children, or other issue respectively, for the purpose of being so applied, without being liable to see to the application thereof, or to require any account of the application of the same; And that if all the said interest, dividends, and annual income shall not be applied, the unapplied part

SHARE IN LEGACY, &c.

children dying without having acquired an absolutely vested interest.

Appointed shares to be brought into hotchpot.

Provision for maintenance.

SHARE IN LEGACY, &c.

Provision for advancement.

thereof shall be accumulated and shall go in augmentation of the fund or share from which the same shall have arisen, and be subject to the same trusts and provisions in all respects as the original fund, yet so nevertheless that such unapplied dividends, interest, and annual income, and the proceeds thereof, shall continue applicable at any subsequent period to the maintenance and education of the child or other issue presumptively entitled to such fund or share. *Provided also, and it is hereby also agreed and declared,* that it shall be lawful for the trustees or trustee for the time being of these presents, at any time or times, with the consent in writing of the said [*intended husband*] and [*intended wife*] during their joint lives, or of the survivor of them during his or her life, and after the decease of such survivor, then at the discretion of the said trustees or trustee (subject to any contrary direction in any such appointment or appointments as aforesaid) to advance for each child or other issue of them the said [*intended husband*] and [*intended wife*] who shall for the time being be absolutely or presumptively (c) entitled to the said trust funds and premises, or any share thereof, any part which the said trustees or trustee shall think proper, of the fund or share to which each such child or other object shall be actually or presumptively entitled, for the purpose of his or her being placed out to any profession or business, or otherwise for his or her advancement or benefit, and which sum or sums of money so advanced shall or may be applied by the said trustees or trustee, or, in their or his said discretion,

Expediency of extending advancement clauses to *vested* shares.

(c) Powers of advancement are often in terms confined to *contingent* shares, under an impression that the advance of *vested* shares may be made without express authority, the consent of the persons entitled to the prior interests being obtained; in which point of view the clause in question, which requires such consent, would seem to be a nullity; but this notion, though correct where the owners of the prior interests are competent to bind those interests, does not apply where (as in the instance in the text) one of those persons is a married woman, *restrained from anticipation during her coverture*, who is thereby disabled from consenting to the application of the fund in the manner proposed, except so far as the advancement clause authorizes her so to do. Hence the propriety of extending the clause to *vested* shares; otherwise it is by no means clear that trustees advancing such shares would be protected against the claims of the wife herself, though as against all other persons of course they would be safe.

shall or may be paid by them or him to the said [*intended husband*], or the guardian or guardians for the time being of each such child, to be so applied, without being liable to see to the application, or bound to require any account of the application of the same. *Provided also*, that if the said [*intended husband*] shall, with the consent in writing of the said trustees or trustee, and also with the consent in writing of the said [*intended wife*] if she shall be then living, advance any sum or sums of money for or towards any of such last-mentioned purposes, then (and as to each child for whom the same shall be so advanced,) if the said money should be equal to or exceed the fund or share to which such child shall be so actually or presumptively entitled as aforesaid, it shall be in full satisfaction of the same, but if the sum so advanced shall be less than the amount of such fund or share, then it shall be in partial satisfaction thereof; And that the said [*intended husband*], his executors, administrators, or assigns, shall be entitled to have immediately raised for his or their own use, out of the said trust funds and premises hereby settled, a sum of money equal to the sum or sums so advanced by him; *AND it is hereby agreed and declared*, that, subject to the aforesaid trusts, powers, and provisions, the said shares and premises hereinbefore expressed to be assigned by the said [*intended wife*], and also the said sum of 1000*l.* so covenanted by the said [*uncle*] to be paid as aforesaid, and the dividends, interest, annual income thereof, and all accumulations of the same respectively, or such parts thereof respectively as shall not have been disposed of under the provisions hereinbefore contained, shall be held *In trust* for such person or persons, and for such interest or interests, with such provisions, and generally in such manner and form in all respects as the said [*intended wife*], (either before or after failure of issue of the said intended marriage, and whether covert or sole), shall, by any deed or deeds attested by one witness or more, or by her last will and testament, or any writing in the nature thereof, to be attested by two or more credible witnesses, from time to time direct or appoint; and in default of and until any such direction or appointment, and subject to any partial or incomplete direction or appointment, Then *in trust* for such person or persons of the blood and kindred of her the said [*intended wife*], as, at the time of her de-

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SHARE IN LEGACY, &c.

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Advances by the husband to the children to go in satisfaction of portions.

Subject to the trusts aforesaid, wife's contributions to the settled property to be subject to her appointment.

And in default of appointment in trust for the next of kin.

SHARE IN LEGACY, &c.

Subject to the aforesaid trusts, the husband's contribution of property to be in trust for him.

Power to trustees to vary securities.

Remark upon the trust for next of kin.

cease, or (which shall last happen) at the time of the total failure or extinction of the children or other issue of the said intended marriage (*d*), being an object or objects or a presumptive object or presumptive objects of the trusts aforesaid, or of any appointment or appointments to be made as aforesaid, would have been entitled by virtue of the statutes of distribution to the personal estate of the said [*intended wife*], if she had then died intestate and without leaving a husband (*e*); and if there shall be more than one such person, then in the same shares as they would in that event have become entitled to under the said statutes. *And it is hereby also agreed and declared*, that, subject to the aforesaid trusts, powers, and provisions, the said policy and premises hereinbefore expressed to be assigned by the said [*intended husband*], and the dividends, interest, and annual income which shall arise from the money which shall be received upon or in respect thereof, and all accumulations of the same respectively, or such parts thereof respectively as shall not have been disposed of under the provisions hereinbefore contained, shall be held in trust for the said [*intended husband*], his executors, administrators, and assigns. *And it is hereby also agreed and declared*, that it shall be lawful for the said trustees or trustee for the time being of these presents, at any time or times after the solemnization of the said intended marriage, with the consent in writing of the said [*intended husband*] or [*intended wife*], during their joint lives, and of the survivor of them during his or her life, and after the decease of such survivor then in the discretion of the said trustees or trustee, to sell and dispose of the trust funds and premises so to be purchased by or transferred to them or him as aforesaid, or any part or parts thereof, and with the like consent or in the like discretion to invest the monies arising therefrom when received, in their or his names or name, in any of the public or

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(*d*) If given to the next of kin living at the wife's decease, children might become entitled under the ultimate trust in the character of next of kin, whose subsequent death before majority or marriage would disqualify them from taking under the trust for children; and the property might by this circuitry fall into the hands of the husband (whose exclusion is the especial object of all provisions of this nature), in the character of personal representative of such deceased children.

(*e*) *Vide ante*, p. 277.



parliamentary funds of Great Britain and Ireland, or upon real securities in England or Wales, and from time to time, with such consent or in such discretion as aforesaid, to alter, vary, and transpose the stocks or funds whereon any of the trust monies shall for the time being be invested; *And it is hereby also agreed and declared*, that it shall be lawful for the trustees or trustee for the time being of these presents, at any time or times after the solemnization of the said intended marriage, with the consent in writing of the said [*intended husband*] and [*intended wife*], during their joint lives, and of the survivor of them during his or her life, to lay out and invest all or any part of the said trust funds, or the monies to arise from the sale thereof, and also the money which from time to time shall arise from the sale or exchange of any hereditaments to be purchased or taken in exchange, and afterwards sold by virtue of this present power, in the purchase of any messuages, lands, or other hereditaments in England or Wales, held for a clear and indefeasible estate of inheritance in fee simple, or any messuages, lands, or hereditaments in England or Wales of a leasehold or copyhold tenure, the leasehold premises being held absolutely for at least ninety years then to come; and the said copyhold premises being of inheritance, or for lives renewable by custom or tenant right; and all the said leasehold, freehold, and copyhold premises being held in possession or subject only to common rack-rent leases; with liberty, if deemed expedient, to enter into special stipulations as to the evidence of title to be required; and from time to time to dispose of and convey the messuages, lands, and hereditaments to be purchased and taken in exchange by virtue of this present power, or any of them, by way of exchange for other hereditaments in England or Wales, of any such tenure or tenures as aforesaid, and to give or receive any money for equality of exchange, and to enter into, make, do, and execute all such contracts, acts, deeds, and assurances as shall reasonably be required or thought proper for effectuating every such purchase and exchange, and to agree to any variation in the terms of any such contract or contracts, either as to price or in any other respect, and to bring, institute, prosecute, abandon, defend, or submit to any action, suit, or proceeding at law or in equity, for compelling a specific performance thereof, either as originally entered into or as varied according to circumstances, or any action at law for damages in respect

SHARE IN LEGACY, &c.

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Power to invest trust monies in the purchase of lands.

Authority to trustees to manage purchases.

SHARE IN LEGACY, &c.

Trust concerning conveyance of hereditaments to be purchased.

thereof, or to abandon or rescind any such original or varied contract or contracts, and release the other party or parties therefrom, and at any time or times thereafter to proceed with all their original powers of purchase and exchange, without being answerable for any loss or damage which shall be occasioned by any such acts as aforesaid; And that the hereditaments to be purchased and taken in exchange as aforesaid shall be conveyed and assured unto and to the use of the trustees or trustee for the time being of these presents, their or his heirs, executors, administrators, and assigns, according to the tenure or respective tenures thereof, *Upon trust*, with the consent in writing of the said [*intended husband*] and [*intended wife*], or the survivor of them, and after the decease of such survivor, then, of the proper authority of the said trustees or trustee for the time being, to make sale and absolutely dispose of the said messuages, lands, and hereditaments, either altogether or in parcels, and either by public auction or private contract, or partly in one mode and partly in the other, and subject to such conditions and stipulations respecting the title to be deduced, or otherwise, as the said trustees or trustee shall think proper, and for the best price or prices which in their or his opinion can or may be reasonably obtained for the same; And with power from time to time to buy in all or any part or parts of the hereditaments which shall be offered for sale at any auction, and to sell the hereditaments so bought in, or any part or parts thereof, in such manner and with such powers as are hereinbefore expressed in regard to any original sale or auction, without being liable for any loss or diminution in price in consequence of such resale; *And also upon further trust* from time to time to enter into, make, do, and execute all such contracts, acts, deeds, and assurances, as shall be reasonably required or thought proper for effectuating the said sales or sale, with powers as to the said contracts for sale, similar to those hereinbefore expressed in regard to contracts for purchase and exchange. *And it is hereby also agreed and declared*, that the receipt or receipts of the trustees or trustee for the time being of these presents, for any sum or sums of money to arise from the said sale or sales, exchange or exchanges, and any and every other sum and sums of money which shall be paid to them or him in the execution of any of the trusts hereinbefore contained, shall be an effectual

Receipts of trustees to discharge purchasers.

discharge or effectual discharges for the same, and that the person or persons by whom the said money shall be paid shall not be bound to see to the application thereof, or be liable for the misapplication or non-application of the same;

SHARE IN LEGACY, &c.

*And it is hereby also agreed and declared*, that the trustees or trustee for the time being of these presents shall stand possessed of the money arising from such sales and exchanges as aforesaid, and the dividends, interest, and annual income thereof (after payment out of the said principal money of the costs, charges, and expenses attending the said sales and exchanges), upon the trusts hereinbefore expressed concerning the trust funds and premises, out of the proceeds or produce whereof the same shall have originally been purchased, and the dividends, interest, and annual income thereof, or such of the same trusts as shall be then subsisting or capable of taking effect; And that until the said messuages, lands, and hereditaments shall be sold as aforesaid, the said trustees or trustee shall stand possessed of the rents and annual profits arising therefrom upon the trusts hereinbefore expressed concerning the dividends, interest, and annual income of the said trust funds and premises, from the proceeds whereof the same shall have been purchased as aforesaid, or such of the same as shall be then subsisting or capable of taking effect.

Declaration of trust of monies arising from sales and exchanges.

*And it is hereby agreed and declared*, that all hereditaments to be purchased as aforesaid shall, when purchased, be considered and deemed to be of the nature of personal estate, and shall be held upon the trusts whereon the money laid out in the purchase thereof, or the stocks, funds, or securities from which the said money shall have arisen, was or were held before the said purchase was made, or would have been held if the same had not been made; And that all hereditaments taken in exchange as aforesaid shall likewise be held upon the trusts whereon the hereditaments for which they were taken in exchange were held; And in the meantime and from time to time until the hereditaments to be purchased and taken in exchange as aforesaid shall be sold, it shall be lawful for the trustees or trustee for the time being of these presents, with the consent in writing of the said [intended husband] and [intended wife], or the survivor of them, and, after the decease of such survivor, then in the discretion of the said trustees or trustee, to demise all or any

Power to lease purchased estate.

SHARE IN LEGACY, &c.

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Power to trustees to ascertain intended wife's share under the respective wills, and give releases.

— to refer disputes to arbitration.

part of the same hereditaments from year to year, or for any term not exceeding twenty-one years, to commence in possession at the time of the creation of the same, or within six calendar months afterwards, at rack rent, without taking any fine for the same. *Provided always, and it is hereby agreed and declared*, that it shall be lawful for the trustee or trustees for the time being of these presents to settle and ascertain in such manner as they or he shall deem expedient, the amount of any monies, properties, and effects due to or claimed by them or him, under and by virtue of the several wills of the said [*father*] and [*mother*] respectively, deceased, or by or from any other ways and means whatsoever, and also to pass and allow the accounts of the persons paying over or transferring the same monies, properties, and effects respectively, or any part thereof respectively, which the said trustees or trustee shall deem it expedient to accept in lieu of or satisfaction for the whole, and to give releases and discharges to the said accounting party or parties, as fully and effectually as the said trustees or trustee might or could do if they or he were absolute beneficial owners or owner of the said properties and effects; And if any disputes, doubts, or difficulties shall arise in relation to any sum or sums of money due, owing, or payable, or claimed to be due, owing, or payable to the said [*intended wife*] or to the said [*intended husband*], in her right, or to the trustees hereof, under or by virtue of any deed or will, or otherwise howsoever, Then, and in that case, it shall be lawful for the said trustees or trustee for the time being of these presents, if they or he shall think proper, to refer any such disputes or claims to such person or persons as the said trustees or trustee on the one part, and the person or persons from whom such sum or sums of money shall be claimed to be due or payable on the other part, shall appoint for that purpose; and that the award and determination of the persons so appointed, or of their umpire, shall be final and conclusive on all persons entitled to any interest or benefit under or by virtue of these presents; and that all other differences (if any shall arise) concerning any property claimed or belonging by or to her the said [*intended wife*], or to the said [*intended husband*] in her right, or to the said trustees or trustee hereof by virtue of these presents, shall be settled or adjusted in the same or like manner, if the said trustees



or trustee for the time being shall think it requisite and proper so to settle or adjust the same, but not otherwise; *Provided also, and it is hereby further agreed and declared*, that it shall be lawful for the said trustees or trustee for the time being of these presents, in their or his absolute discretion, to postpone, suspend, and forbear the exercise and enforcement of all or any of the rights, powers, and remedies hereby vested in or which shall or may accrue to or be exercisable by such trustees or trustee by virtue hereof, anything hereinbefore contained, or any rule of law or equity to the contrary, notwithstanding (*f*); AND the said [*intended wife*], for herself, her heirs, executors, and administrators, doth hereby covenant with the said [*trustees*], their executors, administrators, and assigns, that, notwithstanding any act, deed, matter, or thing whatsoever, by her the said [*intended wife*] made, done, executed, or suffered to the contrary, she the said [*intended wife*] now hath full power and authority to assign or otherwise assure the said undivided shares and premises by her expressed to be hereby assigned or otherwise assured in manner aforesaid, according to the true intent and meaning of these presents; *And also*, that it shall be lawful for the said [*trustees*], their executors, administrators, and assigns, to have, receive, and take the said shares and premises, and the sum and sums of money to become payable

SHARE IN LEGACY, &c.

Power to trustees to suspend the enforcement of claims.

Covenants by intended wife.

That she hath power to assign, &c.

(*f*) Where *choses en action*, legal or equitable, are vested in trustees, it is always advisable to empower them to suspend the enforcement of their claims, since they may otherwise be driven, by a prudent concern for their own exemption from responsibility, to a harsh and injurious enforcement of such claims. One of the first duties of a trustee, in such a case as the present, would be to give notice of the settlement to the executors of the several wills under which the assigned interests are derived, especially of that will which bequeaths the property immediately reducible into possession, so as to preclude the possibility of the executors paying any money to the husband in ignorance of the existence of the settlement. Even the large discretionary powers here vested in the trustees would scarcely relieve them from the consequences of a neglect of this kind. The policy of assurance on the husband's life, of course, will be placed in the hands of the trustees; and notice of the assignment should be given to the assurers, especially if the intended husband is within the bankrupt laws, in which case such notice is requisite for the purpose of taking the property out of his "order and disposition." *Vide ante*, Vol. 8, p. 321.

Expediency of empowering trustees to suspend the enforcement of claims.

SHARE IN LEGACY, &c.

— and for further assurance.

Covenants by intended husband for title to policy of assurance,

and to pay the premiums on the policy.

in respect thereof, upon the trusts hereinbefore expressed concerning the same, without any interruption, claim, or demand of, from, or by the said [*intended wife*], her executors or administrators, or any person or persons lawfully claiming through or under her or them; *And further*, that she the said [*intended wife*], her executors and administrators, and every other person lawfully claiming through or under her or them, will at all times hereafter, on the request of the said [*trustees*], their executors, administrators, or assigns, and at the costs of the said trust estate (g), do, execute, and perfect, or cause to be done, executed, and perfected, all such further acts, deeds, assignments, and assurances whatsoever, as they or any of them shall reasonably require, for the more effectually assigning or otherwise assuring the said shares and premises unto the said [*trustees*], their executors, administrators, or assigns, upon the trusts hereinbefore expressed concerning the same. AND the said [*intended husband*], for himself, his heirs, executors, and administrators, doth hereby covenant with the said [*trustees*], their executors, administrators, and assigns, that the said policy hereby assigned by the said [*intended husband*], or intended so to be, is valid at law and in equity; and that he the said [*intended husband*] is possessed thereof for his own benefit, and hath right in equity by these presents to assign the same, and all monies which shall become due by virtue thereof, unto the said [*trustees*], their executors, administrators, and assigns, in manner aforesaid; and that it shall be lawful for the said trustees or trustee for the time being of these presents to receive and retain all money which shall become payable by virtue of the said policy, according to the true intent and meaning of these presents, without any interruption, claim, or demand by the said [*intended husband*], or by any person or persons whomsoever; *And further*, that he the said [*intended husband*] will from time to time, during his life, pay the premiums to become due on the said policy of assurance, and also will, from time to time, within

(g) Where the property and trusts are of such a nature that the trust property cannot come into the hands of an assignee discharged from the trusts, it seems proper to provide that the further assurances shall be at the costs of the trust estate.

——— days after the same respectively shall have so become due, deliver the receipts for such premiums to the trustees or trustee for the time being of these presents (*h*), and also that he the said [*intended husband*] will in all respects conform to and observe all the regulations and conditions contained in or prescribed by the said policy, so that the same shall be effectually preserved in full force and validity; And that he the said [*intended husband*], his executors, or administrators, or any of them, shall not nor will release, discontinue, or prejudice any action, suit, or proceeding at law or in equity which shall be brought or instituted by the said [*trustees*], or the survivor of them, his executors or administrators, or their or his substitute or substitutes, for the recovery of the monies secured by the said policy of assurance by virtue of the power in that behalf hereinbefore given, or revoke or annul the same power, or do any act to prevent or defeat the exercise thereof; And also, that he the said [*intended husband*], his executors and administrators, and every other person lawfully claiming any right, title, or interest at law or in equity, in, to, or out of the said policy and premises by him the said [*intended husband*] expressed to be hereby assigned, or any part thereof, shall and will at all times hereafter, on the request of the said [*trustees*], their executors, administrators, or assigns, and at the costs of the said trust estate, do, execute, and perfect, and cause to be done, executed, and perfected, all such further acts, deeds, assignments, and assurances, as they or any of them shall reasonably require for the more effectually assigning and confirming or otherwise assuring the said policy and premises unto the said [*trustees*], their executors, administrators, and assigns, upon the trusts hereinbefore expressed concerning the same, and also for enabling them or him to receive and recover the same. AND the said [*intended husband*] and [*intended wife*] do hereby jointly for themselves, their heirs, executors, and administrators, and each of them doth hereby separately for himself and herself, his and her heirs, executors, and administrators, covenant with the said [*trustees*], their executors and administrators, that if, at any time or times during the said intended

SHARE IN LEGACY, &c.

Not to release actions.

And for further assurance.

Covenants by the intended husband and wife to settle future property of the wife.

(*h*) Generally, the trustees are authorized to keep up the insurance if the husband fails to do so, *vide ante*, p. 161.

SHARE IN LEGACY, &c.

Power of appointing new trustees.

coverture, they the said [*intended husband*] and [*intended wife*], or either of them in her right, shall, by gift, descent, succession, or otherwise howsoever, become entitled to any real or personal estate, property, or effects, of the value or to the amount of 100*l.* or upwards, at any one time, (other than and except interests which shall be restricted to the life of the said [*intended wife*], or which, whether so restricted or not, shall be settled and limited to her separate use and disposal)(*i*), Then and in every such case the same shall be forthwith, at the costs of the said trust estate, conveyed, transferred, assured, and paid to the trustees or trustee for the time being of these presents, upon the trusts herein declared concerning the shares and premises hereinbefore assured by the said [*intended wife*], or such of them as shall be then subsisting or capable of taking effect, or as near thereto as the natures and qualities of the said properties respectively will admit; And that, as to any such estates consisting of freehold, leasehold, or copyhold property, the same shall be conveyed and assured upon the trusts hereinbefore expressed concerning the hereditaments to be purchased and taken in exchange as aforesaid. *Provided also, and it is hereby further agreed and declared*, that, on the death, refusal, or incapacity to act of each or either of them the said [*trustees*], or any trustee or trustees to be from time to time appointed in his or their stead, by virtue of this present power, it shall be lawful for the acting trustee or trustees for the time being, or, if there shall be no such trustee, then for the executors or administrators of the last deceased trustee, with the consent in writing of the said [*intended husband*] and [*intended wife*], or of the survivor of them, and after the death of such survivor, of his or their own proper authority, to appoint a new trustee or trustees in the stead of such trustee or trustees respectively so dying, refusing, or becoming incapable to act as aforesaid; And thereupon the said trust funds and premises, or such part thereof, if any, as shall be legally assignable or transferable (*k*), shall, at the expense of the trust estate, be assigned,

(*i*) It seems advisable that covenants of this nature should be limited by some minimum. It is sometimes a question, whether they apply to *life* interests. The affirmative or negative should be made clear.

(*k*) Where the trust property consists of *choses en action*, there seems to



transferred, or otherwise assured to such new trustee or trustees, jointly with the surviving or continuing trustee or trustees, or solely, as the case may require, upon the trusts hereinbefore expressed concerning the same, or such of them as shall be then subsisting; and that every such new trustee, either before or after such assignment, transfer, or assurance shall be made and executed, shall have and may exercise the same powers and authorities as if he had been appointed a trustee by these presents; And that none of the trustees appointed, or to be appointed as aforesaid, shall be answerable or accountable for the other or others of them, or for the acts, deeds, and defaults of the other or others of them, nor for involuntary losses, nor for money received under receipts in which they shall join only for conformity; And that the present and future trustees shall and may reimburse themselves and each other all the costs and expenses to be incurred in the execution of the trusts hereby reposed in them respectively, or in relation thereto; *And especially* it is hereby agreed and declared, that it shall be lawful for the said [*one of the trustees*] to make all such and the like charges, and to receive such and the like fees and professional emoluments for business professionally transacted for the said trust estate, as he would be entitled to make and receive for the business so transacted in case he had not been appointed a trustee by these presents, any rule of law or equity to the contrary thereof notwithstanding (*l*). IN WITNESS, &c.

SHARE IN LEGACY, &c.

Trustee, who is a solicitor, authorized to make professional charges.

be but little advantage in preparing a formal assignment of them on a change of trustees, except, indeed, that, with respect to *legal choses en action*, sometimes the accompanying appointment of substitutes, to exercise the powers of a letter of attorney, is useful. This, however, does not apply to equitable *choses en action*, in regard to which the assignment must be regarded as a nullity. It frequently happens, however, that though these instruments possess no intrinsic efficacy, yet that the execution of them is rendered necessary by the terms of the power of appointing new trustees.

(*l*) A solicitor, who fills the office of trustee, is, by the general rule precluding trustees from claiming remuneration for their services, (*vide ante*, Vol. 8, p. 364), unable to charge for business transacted for the trust estate. This doctrine was very distinctly laid down in a late case in the Exchequer, of the judgment in which the Editor has been favour-

As to assigning *choses en action* on a change of trustees.

Solicitor, who is trustee, not entitled to charge for business transacted for the trust estate.

SHARE IN LEGACY, &c.

ed by Mr. *Younge* with the following note:—The Lord Chief Baron (*Lyndhurst*) said, that the sole question to be decided was, as to whether a solicitor, who was an executor or trustee, was entitled to be paid his bill of costs for business done by him as an attorney, he being also an executor. There was no point more clearly established as a general question by the case referred to of *Robinson v. Pett*, 3 P. W. 251, and other decisions, than that an executor or trustee was not entitled to be paid for his trouble. If the accounts were complicated, and the executor or trustee took upon himself to settle and manage those accounts, although it might take a great deal of his time and attention, the principle of equity was, that he was not entitled to compensation for his time and trouble. If he chose to employ an accountant to settle the accounts, for the expenses so occasioned he was entitled to be remunerated out of the estate. The principle was this:—it was the duty of an executor or trustee to be the guardian of the estate committed to his charge. If he were allowed to perform the duties of the estate, and to claim compensation for his services, his interest would be opposed to his duty, and, as a matter of prudence, this Court could not allow an executor or a trustee to place himself in such a situation. If he chose to perform those duties he was not entitled to compensation. His Lordship was of opinion, that the principle applied as strongly to the case of an attorney as to that of any other person. If an attorney, who is an executor, performs business that was necessary to be transacted—if this attorney, being an executor, performs those duties himself—his Lordship was of opinion, that he (the attorney) was not entitled to be repaid for those duties; it would be placing his interest at variance with the duties he had to discharge. It was said that the bill might be taxed, and that this would be a sufficient check. He was of opinion that it would not be a sufficient check. The estate had a right not only to the protection of the taxing officer, but also to the vigilance and guardianship of the executor or trustee, in addition to the check of the taxing officer. There might be cases (he did not speak with reference to the present case) where a trustee, placed in the situation of a solicitor, might, if he were allowed to perform the duties of a solicitor, and to be paid for them, find it very often proper to institute and carry on legal proceedings, which he would not do if he were to derive no emolument from them himself, and if he were to employ another person. In point of prudence and propriety, and as a guard over the estate, he was of opinion that it would not be proper that a solicitor, who was a trustee, should be distinguished from an ordinary trustee. *If a trustee, who was a solicitor, acted as a solicitor, he was not entitled to charge for his labour, but merely for his costs out of pocket.* This rule applied to the present case. *New v. Jones*, Exch. 9th Aug. 1833.

Trustee not entitled to charge for business done as solicitor.

In order, therefore, to place a solicitor, who is trustee, in the same situation with respect to charges as if he did not sustain this office, which

seems reasonable, and is commonly the intention of parties; and in order, moreover, to relieve co-trustees from the invidious task of withholding such allowances, the clause in the text should be inserted. If (as often happens) the settlement or will creating the trusts is prepared by the trustee-solicitor himself, probably he would prefer that the clause should be framed in general terms, thus:—

SHARE IN LEGACY, &c.

“ And especially it is hereby agreed and declared that every present or future trustee acting in the execution of the trusts of these presents, who is or shall or may be of the profession of an attorney at law, or solicitor, shall be entitled to make the same professional charges, and receive the same fees and allowances, for business transacted for the trust estate, as such trustee would be entitled to make and receive for the business so transacted if he did not fill or sustain the office of trustee, any rule of law or equity to the contrary notwithstanding.”

Clause enabling trustees, who may be solicitors, to make charges.

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RELEASE *in Fee* of FREEHOLDS, and COVENANT to SURRENDER COPYHOLDS, (*both in MORTGAGE*), to the Use of the intended HUSBAND for LIFE, with Remainder to the intended WIFE for LIFE, with REVERSION to the intended HUSBAND in FEE. Husband's COVENANTS for TITLE, and to PAY OFF the MORTGAGE. HUSBAND to be entitled to PERSONALTY DEVOLVING to the WIFE during the COVERTURE. (*Variation where the Limitations are to the HUSBAND for the JOINT LIVES of HIMSELF and his intended WIFE, with REMAINDER to the SURVIVOR in FEE*). A short Form.

FREEHOLDS AND COPYHOLDS IN MORTGAGE.

THIS INDENTURE, made the — day of —, 18—, BETWEEN [*intended husband*], of &c., of the first part; [*intended wife*], of &c., of the second part; and [*releasee to uses*], of &c., of the third part. WHEREAS the said [*intended husband*] is seised of the freehold — and hereditaments hereinafter described, and hereby released, for an estate of inheritance in fee simple in possession, free from all incumbrances, except a certain term of one thousand years,

Parties.

Recital of intended husband's seisin.

FREEHOLDS  
AND COPY-  
HOLDS IN  
MORTGAGE.

— Of intended  
marriage.

*Testatum.*

Intended hus-  
band releases  
the freehold  
lands.

Parcels.

created by the said [*intended husband*] by an indenture bearing date the — day of —, for securing to [*mortgagee*], of &c., the principal sum of £—, and interest at the rate of 5*l.* per cent. per annum: AND WHEREAS the said [*intended husband*] is also seised of or entitled to the copyhold — and hereditaments hereinafter described, and hereby covenanted to be surrendered, for a like estate in fee simple, at the will of the lord, according to the custom of the manor of —, subject, nevertheless, to a conditional surrender, bearing date the — day of —, made by the said [*intended husband*], to the use of the said [*mortgagee*], his heirs and assigns, pursuant to a covenant contained in the hereinbefore mentioned indenture of mortgage for securing the said sum of £— and interest, on which mortgage security the said principal sum is now due, together with an arrear of interest from the — day of — last: AND WHEREAS a marriage is intended shortly to be solemnized between the said [*intended husband*] and the said [*intended wife*], and, upon the treaty for the said intended marriage, the said [*intended husband*] proposed and agreed to settle and assure the several freehold and copyhold — and hereditaments hereinafter described to the uses hereinafter expressed concerning the same respectively; in consideration of which settlement so to be made, it was also agreed that the said [*intended husband*] should be entitled to receive for his own use whatever personal estate should happen legally or equitably to devolve to the said [*intended wife*] during her said intended coverture. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the said intended marriage, and of the premises, and in order to make some provision for the said [*intended wife*] in case she should survive her said intended husband; and also, in consideration of 10*s.* of lawful money of Great Britain and Ireland, paid by the said [*releasee to uses*] to the said [*intended husband*], at or immediately before the execution of these presents, the receipt whereof is hereby acknowledged, He the said [*intended husband*] Doth, by these presents, grant, bargain, sell, release, and confirm unto the said [*releasee to uses*], and his heirs, (in the actual possession, &c.), ALL THAT (*describe parcels, with general words applicable to the nature of the proper-*



ty) &c., and the reversion &c.; and all the estate &c.; To HAVE AND TO HOLD the said — and hereditaments hereinbefore described and hereby released, or intended so to be, with their appurtenances, (subject, nevertheless, to the hereinbefore mentioned mortgage term), unto the said [*releassee to uses*], and his heirs for ever, *To the use* of the said [*intended husband*], his heirs and assigns, until the said intended marriage shall be solemnized, and after the solemnization thereof, *To the use* of the said [*intended husband*], and his assigns, during the term of his natural life, without impeachment of waste; And after his decease (*a*), *To the use* of the said [*intended wife*] and her assigns, for the term of her natural life, without impeachment of waste; And after the decease of the survivor of them the said [*intended husband*] and [*intended wife*], *To the use* of the said [*intended husband*], his heirs and assigns, for ever (*b*), and to or for

FREEHOLDS  
AND COPY-  
HOLDS IN  
MORTGAGE.

*Habendum.*

To the use of intended husband until the marriage; and afterwards,  
To the use of the intended husband for life;  
Remainder to the wife for life;  
Remainder to the husband in fee.

(*a*) As the remainder to the wife is vested, it is unnecessary to limit an estate to trustees for preserving it; and here it may be observed, that, in creating a remainder for life expectant on a previous life estate, the remainder ought not to be (as it often is) prefaced by the words “if the said [*remainder-man*] shall be then living;” which words might be contended to render the remainder contingent, and consequently destructible, though it is probable that the Courts would hold that the expression merely refers to the contingency upon which the estate will take effect *in possession*, and is not designed to prevent the immediate vesting. In short, the liability of the estate to failure in the event in question is simply a consequence of the nature of the estate as terminating with life, and ought not to vary or influence the terms of limiting the remainder.

Remarks upon the remainder of the intended wife.

(*b*) Where the property is to be limited to the use of the husband during the joint lives, with remainder to the survivor in fee, proceed as follows:—

Variations where the fee is limited to the survivor.

“*To the use* of the said [*intended husband*] and his assigns, during the joint natural lives of the said [*husband*] and [*wife*], without impeachment of waste; and from and immediately after the determination of that estate by any means, in the lifetime of the said [*husband*] or [*wife*], then *To the use* of the said [*trustees to preserve*] and their heirs, during the joint natural lives of them the said [*intended husband*] and [*intended wife*], *Upon trust* to support and preserve the contingent use hereinafter limited from being defeated or destroyed, and for that purpose to make entries and bring ac-

FREEHOLDS  
AND COPY-  
HOLDS IN  
MORTGAGE.

Further *testa-*  
*tum*.

Covenant by in-  
tended husband  
to surrender  
copyholds.

no other use, intent, or purpose whatsoever. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said recited agreement, and in consideration of the said intended marriage, the said [*intended husband*], for himself, his heirs, executors, and administrators, doth hereby covenant with the said [*releasee to uses*] and his heirs, that the said [*intended husband*], or his heirs, will, at his or their own costs and charges, at the next Court Baron to be holden for the said manor of —, in the county of —, or out of Court, as soon as conveniently may be after the solemnization of the said intended marriage, surrender into the hands of the lord or lady of the said manor, according to the custom thereof, ALL THAT (*describe parcels*), together with all rights, members, and appurtenances whatsoever to the said premises, or any part or parts thereof, belonging or appertaining, or now or at any time or times heretofore usually held, occupied, or enjoyed therewith; And also all the estate, right, title, and interest, at law and in equity, of the said [*intended husband*], in, to, or out of the said copyhold hereditaments and premises, and every part thereof, To the uses and subject to the limitations hereinbefore expressed and contained concerning the freehold hereditaments and premises hereby released, or intended so to be (c), to the intent that the persons for the time being entitled under or by virtue of the said uses and limitations, may from time to time be admitted tenants of the said copyhold premises; To hold the same at the will of the lord, according to the custom of the said manor, and by the rents, suits, and

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tions as occasion shall require, nevertheless to permit the said [*intended husband*] and his assigns to receive the rents of the said hereditaments during the joint natural lives of the said [*intended husband*] and [*intended wife*]; and, immediately after the decease of either of them the said [*intended husband*] or [*intended wife*], To the use of the survivor of them, his or her heirs and assigns, for ever."

Variation ap-  
plicable to co-  
pyholds.

(c) If, among the uses declared of the freeholds, there is a limitation to trustees for preserving contingent remainders, say (as the limitation does not apply to copyholds)—

"except the limitation to the said trustees for the purpose of preserving the contingent remainders."

services therefore due and of right accustomed; subject, nevertheless, to the hereinbefore recited conditional surrender, and to the said principal sum and interest thereby intended to be secured (*e*). *Provided always*, and it is hereby declared, that it shall be lawful for the said [*intended husband*] or his assigns, at any time or times during his natural life, and also for the said [*intended wife*] or her assigns, at any time or times after the decease of her said intended husband, during her natural life, by any indenture or indentures under his or her hand and seal, to demise or lease the said — hereditaments and premises hereby released and covenanted to be surrendered, or any part or parts thereof respectively, for any term not exceeding twenty-one years in possession and not in reversion or by way of future interest, reserving upon every such lease the most improved yearly rent or rents that can be reasonably obtained for the premises thereby to be leased, without taking any fine or foregift in respect of the granting of any such lease or leases respectively. AND the said [*intended husband*], for himself, his heirs, executors, and administrators, doth hereby covenant with the said [*releasee to uses*], and his heirs, that notwithstanding any act, deed, matter, or thing whatsoever, made or done, or permitted to be made or done by the said [*intended husband*] (*f*) to the contrary (except as appears by these presents), he the said [*intended husband*] now hath in himself good right and absolute authority by these presents to release or otherwise assure the said freehold hereditaments and premises unto the said [*releasee to uses*] and his heirs for ever, to the uses and in manner aforesaid, according to the true intent and meaning of these presents, and also to surrender the said copyhold hereditaments and premises to the uses aforesaid, according to the covenant for that purpose hereinbefore contained; And also that the said freehold and copyhold hereditaments and premises respectively shall from time to time, and at all times for ever hereafter, remain to the uses hereinbefore declared concerning the same respectively, and

FREEHOLDS  
AND COPY-  
HOLDS IN  
MORTGAGE.

Power of leasing.

Covenants by the intended husband that he has power to release and surrender.

—That the premises shall remain to the uses aforesaid;

(*e*) The covenantee should call on the husband immediately after the marriage to surrender the copyholds pursuant to his covenant.

(*f*) If the settlor derived the property by descent add—"or any of his ancestors;" if under a will which is antecedently recited—"or by the said [*testator*], the testator, deceased."

Variation where the property was derived by descent or will.

FREEHOLDS  
AND COPY-  
HOLDS IN  
MORTGAGE.

—free from in-  
cumbrances.

And for further  
assurance.

be peaceably and quietly held and enjoyed, and the rents and profits thereof respectively received and taken accordingly, without any eviction, interruption, or denial whatsoever from or by the said [*intended husband*] or his heirs, or any person or persons rightfully claiming through or under him or them (*e*); and that free and clear of and from or by the said [*intended husband*], his heirs, executors, or administrators, effectually kept indemnified from and against all former and other estates, rights, titles, charges, and incumbrances whatsoever, made or created by the said [*intended husband*] (*f*), or occasioned by his acts, defaults, privity, or procurement, (except the hereinbefore recited mortgage security affecting the said freehold and copyhold hereditaments respectively as aforesaid); *And further*, that he the said [*intended husband*], and his heirs, and every person whosoever rightfully claiming through, under, or in trust for him or them (*g*), (except the person whose estate or interest is hereinbefore excepted), will at any time or times hereafter upon every request, and at the costs of the person or persons for the time being entitled under the limitations hereinbefore contained, make, do, execute, and perfect every such lawful act, deed, conveyance, or assurance whatsoever, for more effectually releasing or otherwise assuring the said freehold hereditaments and premises to the uses aforesaid, and for more effectually surrendering or otherwise assuring the said copyhold hereditaments and premises to the uses aforesaid, at the will of the lord, according to the custom of the said manor of —, as by the person or persons making such request, or his or their counsel in the law, shall be reasonably advised and required; so as such further assurances shall not contain in them or imply

Variations  
where the pro-  
perty was de-  
rived by de-  
scent or will.

(*e*) If the settlor derived the property by descent, add “or through or under any of his ancestors;” if by will—“or through or under the said [*testator*], deceased.”

(*f*) If the settlor derived the property by descent, add “or any of his ancestors, or occasioned by their respective acts,” &c.; if by will—“or by the said [*testator*], deceased, or occasioned by their respective acts,” &c.

(*g*) If the settlor derived the property by descent, add “or through, under, or in trust for any of his ancestors;” if by will—“or through, under, or in trust for the said [*testator*], the testator, deceased.”



any other or more general covenant or warranty than against the acts, deeds, and defaults of the person or persons who shall be required to make or execute the same, and his, her, or their heirs, and so as the person or persons who shall be required to make or execute such further assurances shall not for that purpose be compellable to go from his, her, or their usual place or places of abode; *And lastly*, that the said [*intended husband*], his heirs, executors, or administrators, shall and will at his or their own costs and charges, within two years from the day of the date of these presents, pay off and discharge the said principal sum of £——, and interest, owing on the hereinbefore-recited indenture of demise and conditional surrender, and shall and will in the meantime, and at all times hereafter, effectually keep indemnified the said [*intended wife*], and her assigns, from and against all costs, damages, and expenses, in respect or by reason of the said principal and interest monies; it being the express intent and meaning of the said parties hereto, and of these presents, that, after the decease of the said [*intended husband*], the said freehold and copyhold hereditaments respectively shall be held and enjoyed by the said [*intended wife*] or her assigns, and the rents and profits thereof received and taken by her or them during her natural life, free and discharged from the said mortgage debt (*h*). AND THIS

FREEHOLDS  
AND COPY-  
HOLDS IN  
MORTGAGE.

Covenant by intended husband to pay off mortgage debt within two years.

(*h*) Where an estate settled in contemplation of marriage is subject to a mortgage debt, the incumbrance should appear on the face of the settlement; and it ought also to be shewn whether the settlor means, that, as between himself and the parties claiming under the settlement, the mortgage shall be considered as his own debt, or the debt of the estate; in other words, whether he is to be bound to discharge it. A question of this kind arose in relation to a leasehold estate settled on marriage, in the case of *Clarke v. Samson*, 1 Ves. sen. 100; but the case was too special in its circumstances to supply any general rule, the mortgage having been created not by the settlor himself, but by his father, under whose will he derived the property. In fact, the object and purpose of the settlement appear to have been very limited, the same having been executed in consequence merely of a doubt whether the issue, (who were named in the will of the grandfather as well as in the settlement), could take by purchase; and Lord *Hardwicke* considered, that, upon the whole instrument, it was apparent that the parties meant to leave the mortgage as an incumbrance on the estate.

Suggestions where estates about to be settled are in mortgage.

FREEHOLDS  
AND COPY-  
HOLDS IN  
MORTGAGE.

Further *testa-  
tum*.

Covenant by in-  
tended wife that  
the husband  
shall become ab-  
solutely entitled  
to personalty  
devolving to her  
during cover-  
ture.

INDENTURE ALSO WITNESSETH, that, in consider-  
ation of the said intended marriage and of the settlement and  
assurance hereinbefore made by the said [*intended husband*],  
it is hereby agreed and declared, and particularly the said  
[*intended wife*] for herself, her heirs, executors, and admin-  
istrators doth hereby covenant and declare with and to the  
said [*intended husband*], his executors or administrators,  
that all the personal estate, property, and effects whatsoever,  
which, by gift, bequest, representation, or otherwise, shall  
devolve to the said [*intended husband*] and [*intended wife*],

If the settlor enters into covenants for title extending to the acts of the  
person by whom the mortgage was created, without excepting the in-  
cumbrance, he thereby renders himself liable to exonerate the estate; but,  
where such is the intention, it seems better to notice the mortgage debt  
in the covenants for title, and to introduce an express covenant by  
the settlor to discharge it. If it be intended that the persons claiming  
under the settlement shall take the estate *cum onere*, a declaration to  
that effect should be inserted, and which may be expressed in the fol-  
lowing terms:—

Settlor not to be  
compellable to  
pay off mort-  
gage debt.

“*Provided always*, and it is hereby declared, that nothing  
herein contained shall extend or be construed to extend to  
oblige or compel the said [*settlor*], his heirs, executors, or  
administrators, to pay off and discharge the said principal  
sum of £—— and interest in ease and exoneration of the  
said hereditaments and premises which are now charged  
therewith, but the same shall and may, as between him the  
said [*settlor*] and the persons claiming under the limitations  
hereinbefore contained, be and be deemed to be the proper and  
exclusive debt of the said estate, any rule of law or equity to  
the contrary thereof notwithstanding.”

A clause of this nature of course would be unnecessary, where by the  
trusts of the settlement provision is made for the liquidation of the mort-  
gage debt; and such a provision ought always to be made unless the set-  
tlor engages to disincumber the estate; and, even where he does so en-  
gage, parties should be careful not to tie up an estate in mortgage to  
uses in strict settlement, without ample powers enabling the trustees to  
convert the property in case the mortgage debt is called in. If the set-  
tlor, who is under no obligation to exonerate the property, pays the debt,  
he would, of course, stand in the place of the mortgagee as a creditor on  
the estate, and the security should be transferred accordingly. (*Vide*  
*ante*, Vol. 8, p. 137).

FREEHOLDS  
AND COPY-  
HOLDS IN  
MORTGAGE.

or either of them, in her right, during her said intended cover-  
ture, or to which they, he, or she shall become beneficially  
entitled either in possession, reversion, remainder, or expec-  
tancy (*i*), or in any other manner whatsoever, shall be and  
become the exclusive and absolute property of the said [*in-  
tended husband*], free and clear of and from all equity or  
right of the said [*intended wife*] to a settlement or provision  
thereout, and all other claims and demands whatsoever; And  
it is hereby declared that leasehold estates held for lives, and  
which are not made transmissible to the heirs of the said [*in-  
tended wife*], shall be deemed to be personal estate within  
the intent and meaning of this present covenant (*k*). In  
WITNESS, &c.

(*i*) As to the nature of the husband's interest in his wife's personal  
estate, *vide ante*, p. 10 *et seq.*

(*k*) Without a declaration on this point it seems open to dispute.

SETTLEMENT of LEASEHOLDS for LIVES on  
INTENDED HUSBAND for Life, with Remainder  
to the INTENDED WIFE for Life, with Remainder  
to their respective CHILDREN by former Mar-  
riages. COVENANT by Husband during his  
Life to RENEW the LEASE. In case of his De-  
fault, and also after his Decease, RENEWAL to  
be made by TRUSTEES. Clause fixing PROPOR-  
TIONS of CONTRIBUTION towards Expenses of  
Renewal. POWER of REVOCATION and NEW  
APPOINTMENT (*a*).

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LEASEHOLDS  
FOR LIVES.

**THIS INDENTURE**, made the — day of —,  
18—, BETWEEN [*intended husband*], of &c., of the first Parties.

(*a*) In limiting either by deed or will renewable leaseholds held for  
lives or years, to or in trust for one or more persons for life with ulterior  
trusts, several points require attention. 1st, To state explicitly whe-  
ther it is intended to impose on the tenant for life, or the trustees, an

Points to be at-  
tended to in li-  
miting renew-  
able leaseholds.

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LEASEHOLDS  
FOR LIVES.

part; [*intended wife*], of &c., widow, of the second part; and [*trustees*], of &c., of the third part; (*reciting intended*

obligation to renew the lease, if it should become renewable, (*i. e.* if an opportunity of renewal should occur), pending the life interest or trusts. 2ndly, To provide out of what fund and in what manner the expenses of renewal are to be raised. And 3rdly, 'In what proportions they are to be ultimately contributed by the persons beneficially interested.

Extent of a trustee's or tenant for life's obligation to renew, and effect of such renewal.

With respect to the first point it is clear, that, if the settlement or will is silent respecting the renewal of the lease, the trustee or tenant for life is under no obligation to renew\*. See *Nightingdale v. Lawson*, 1 B. C. C. 443; *Stone v. Theed*, 2 B. C. C. 248; *James v. Dean*, 15 Ves. 242. But it is equally clear, that, if the trustee or tenant for life actually renews, though not compellable so to do, the renewed lease thus obtained is subject to all the equities affecting the original lease; because, to use the words of Lord *Thurlow*, "the estate being from its nature capable of renewal, the tenant for life in renewing for his own benefit would be making an unconscientious benefit of the estate." See *Holt v. Holt*, 1 Ch. Cas. 191; *Anon.* 2 Ch. Cas. 207; *Edwards v. Lewis*, 3 Atk. 538; *Taster v. Marriott*, Amb. 668; *Lawrence v. Maggs*, 1 Eden, 453; *Pickering v. Vowles*, 1 B. C. C. 197; *Killick v. Flexney*, 4 B. C. C. 161; *Parker v. Brooke*, 9 Ves. 583; *Fitzgibbon v. Scandau*, 1 Dow, 261; *Fitzroy v. Howard*, 3 Russ. 225. And it would be immaterial that the renewed lease comprised a larger interest than the party effecting the renewal derived from the settlement or will; as where the interest so derived was a mere tenancy from year to year, and the trustee or the tenant for life (if he can be so called) in possession under such tenancy obtains a renewed lease for a term of years. *James v. Dean*, 11 Ves. 383; 15 Ves. 236; *Randall v. Russell*, 3 Mer. 190. Nor is a case taken out of the general principle by the mere fact that the renewed lease is obtained, not from the immediate reversioner, but from the superior landlord. *Giddings v. Giddings*, 3 Russ. 241.

Purchase of the fee by persons interested in lease.

It has been decided, however, that the purchase of the reversion in fee by a trustee or partial owner of a leasehold interest, does not fall within the doctrine in question, because the inheritance so purchased for his own benefit cannot be regarded as a mere graft upon the leasehold interest. *Randall v. Russell*, 3 Mer. 197; *Hardman v. Johnson*, Id. 352. See also *Norris v. Le Neve*, 3 Atk. 38. But where the executor of a mortgagee, who held a term of five hundred years, in consideration of the mortgage debt and a small further sum paid by him, purchased in his own name the inheritance in fee and the equity of redemption in the term; he was not permitted to retain the purchase for his own benefit,

\* It would be immaterial, it is conceived, whether the lessor was bound to renew or not; the fact of the lessee being under such an obligation of course would be very important.



*marriage, and also a lease for three lives by way of feoffment to the intended wife*): NOW THIS INDENTURE WIT-

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but was declared to be a trustee for the persons beneficially interested under the will of his testator. *Fosbrooke v. Balguy*, 1 Myl. & Keene, 226.

*Testatum.*

Renewal clauses should not so peremptorily direct trustees or tenants for life to renew, as to oblige them to submit to any terms which the lessor may think proper to exact; see 3 Madd. 494; the danger of which, however, is less in the case of a lease held under an ecclesiastical corporation, or any public body, than where the lessor is a private individual. But it ought distinctly to appear that the trustees' discretion is given only for the purpose of enabling them to resist an extravagant demand, and is not to be exercised arbitrarily, and with a view to the exclusive advantage of any of the persons beneficially interested. It seems that the courts incline to construe words which might seem to confer larger discretionary power as inserted for the definite purpose before suggested. Thus, where by an indenture of settlement, dated 25th of May, 1793, certain leaseholds, held of the Dean and Canons of Windsor, were settled on A. for life, then on B. for life, and then on C. absolutely; and it was provided, "that it should be lawful for the trustees from time to time, as occasion should require, *and as they should think proper*," during the continuance of the trusts, to apply for renewal, and do their endeavours to renew the leases and to defray the fines and charges out of the rents and profits, or by mortgage thereof. In 1802, the trustees took a renewed lease for twenty-one years, and there had been no renewal since, though it was the custom of the Dean and Canons upon the expiration of the first seven years, on a surrender of the existing term and payment of the fine, to grant new leases for fresh terms of twenty-one years. B. and C. filed the present bill, which prayed that the trustees might be directed to renew in pursuance of the trusts of the will. The trustees put in demurrers, which Sir *J. Leach*, V. C., overruled, his Honor observing, that an arbitrary and capricious power, with respect to renewal, might be given to trustees, but was not conferred by this settlement, where the trustees were to renew as occasion might require, and as they might think proper, by which was to be understood as they might think proper for the interests of the *cestuis que trust*. The exercise of a power of renewal did indeed, his Honor observed, require a discretion; for otherwise a trustee would be bound to comply with any unreasonable demand on the part of the lessor, but not an arbitrary and capricious discretion. *Lord Milsington v. Earl Mulgrave*, 3 Madd. 491.

Degree of discretion proper to be left in a trustee or tenant for life.

An obligation to renew may be imposed without any words directly mandatory; it is enough that the means of renewal are provided, with an expression of the purpose to which those means are to be applied. See *Lord Montfort v. Lord Cadogan*, 17 Ves. 488; 19 Ves. 635. But in a

What words create an obligation to renew.

Intended wife  
with the privy  
of intended hus-  
band releases.

NESSETH, that, in consideration of the said intended marriage and of the covenant hereinafter contained on the part of

late case it was decided that a bequest of leaseholds to A. for life, "*subject to the payment of all fines and rents as they become due yearly and for every year,*" did not oblige A. to renew the lease which was held under the Dean and Chapter of Westminster, whose custom it was to renew their forty years' leases every seven years. *Capel v. Wood*, 4 Russ. 500.

Consequences of  
neglect to re-  
new.

Where trustees who are directed to renew fail to do so, they are liable to make good the loss of the person damnified; and the trustees will be entitled to indemnity out of the estate of the person benefited by their laches to the extent of such benefit. *Lord Montfort v. Lord Cado-gan*, 17 Ves. 488; 19 Ves. 635.

If a tenant for life neglects to renew in compliance with the directions of the instrument creating his interest, his assets are of course liable to compensate the remainder-man; and in a case where the excuse was, that, on the occasion of one application for a renewal, an unreasonable sum had been asked by the lessor, and who, to another application, had given a positive refusal, Lord Eldon considered that the fact of the remainder-man having himself afterwards effected a renewal, was a conclusive answer to the alleged impracticability of doing so; and his Lordship directed a computation to be made of what would have been the amount of reasonable fines for the renewed leases, when they ought to have been obtained, and the tenant for life was charged such sum, with a deduction on account of the remainder-man's enjoyment after the death of the tenant for life. *Colegrave v. Manby*, 6 Madd. 72; S. C. 2 Russ. 238.

Manner of rais-  
ing expenses of  
renewal.

II. The next question is, how the expenses of renewal are to be raised. If the direction "is to pay them out of the rents and profits," (according to the ordinary but too equivocal language of such trusts), the question occurs, whether these words are to be read as importing *annual* rents and profits, or whether the trustees are authorized to raise the money by mortgage. In the case of *Allan v. Backhouse*, 2 Ves. & Bea. 65, the former construction prevailed, though it is observable that the lease was held for lives, a case in which, obviously, there would be great inconvenience in providing a fund out of annual rents; because, before the death of the *cestui que vie*, it cannot be known when the money will be wanted, and afterwards, usually, there is not time, the lessor not being bound to wait. In such cases, therefore, it is especially important that a power of mortgaging should be given to the trustees.

By whom ex-  
penses of re-  
newal are to be  
borne.

III. The remaining point for consideration relates to the apportionment of the charge among the respective beneficial owners. Formerly, the rule was, that where a lease was renewed during a tenancy for life, the tenant for life was charged with one-third, and the remainder-man with two-thirds; but this rule has been long exploded, and deservedly, for it was generally

the said [*intended husband*], and also of the natural affection which the said [*intended wife*] and [*intended husband*] re-

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unfair, operating injuriously sometimes towards the tenant for life, and sometimes towards the remainder-man. In the case of *Buckeridge v. Ingram*, 2 Ves. jun. 652, Lord *Alvanley* thought that the tenant for life should pay only the interest, as in the instance of a mortgage. The difference between the two cases, however, has been clearly pointed out by Lord *Eldon*. "In the case" (observed his Lordship in *White v. White*, 9 Ves. 560) "of a tenant for life of an equity of redemption, and the remainder-man in tail or in fee, the whole inheritance being charged with the mortgage, it is fair that the tenant for life shall only keep down the interest; for the whole charge is upon the whole inheritance, and the natural division is, that he who has the *corpus* shall take the burthen; and he who has only the fruit shall pay to the extent of the fruit of that debt. But these interests (i. e. the interests acquired by renewal), whether for life or for years, are in their nature temporary. I cannot, therefore, apply to them that rule, as to another species of estate, distinct in the very point that is to furnish the rule. Therefore, that position, that the tenant for life is bound to pay the interest, must be understood with this allowance—that he is further bound to have charged upon him a due proportion of the benefit he takes in the estate by the application of the principal paid for the purchase of the renewed interest in the estate." Such, accordingly, is now the established doctrine. Thus, if leaseholds for years are limited by deed or will to A. for life, and after his decease to B. absolutely, and the lease having become renewable in the lifetime of A., he obtains a new term of twenty-eight years, and afterwards dies, leaving nineteen years of the renewed term unexpired, the sum paid by A. for the renewed lease must be borne by himself and B., in proportion to the respective values of the nine years actually enjoyed by the former, and the nineteen years remaining for the latter; and compound interest is to be computed upon the proportional value of the nineteen years' term to the whole expense of renewal. See *Nightingdale v. Lawson*, 1 B. C. C. 443.

Tenant for life and remainder-man to contribute according to actual enjoyment.

There is no difference in the principle of computation between a renewable term for years and a renewable lease for lives, (see 9 Ves. 559); though, obviously, it is less difficult to adjust the proportions in the case of a certain term than in that of one determinable on death, or on any other contingency.

In computing the proportion of a renewal fine to be borne by a tenant for life, of course the length of his enjoyment antecedent to the period of renewal is not to be taken into the calculation, as such enjoyment is derived wholly out of the old term. Upon the same principle, a tenant for life is not bound to contribute at all towards the expenses of a renewal which takes place subsequently to the determination of his estate. See

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spectively bear to their respective children hereinafter named, and also in consideration of 10s. paid by the said [*trustees*] to

*Verney v. Verney*, Amb. 88. On the other hand, if a renewed lease, which is obtained by the owner of an estate for life, or of any other partial interest, wholly runs out during the continuance of such interest, he, having derived the entire benefit, must bear the entire charge.

These several positions may be illustrated by the following case. Suppose a freehold lease to be settled on A. for life, with remainder to B. for life, with remainder to C. absolutely. The *cestui que vie* named in the lease outlives A., but dies in the lifetime of B., who obtains a renewed lease. The *cestui que vie* in the new lease also dies in the lifetime of B., who again renews, and dies during the continuance of such renewed lease. A. could not be called upon to contribute towards the expenses of either renewal, his whole estate having come out of the original lease. On the same principle, B. would be liable to pay the entire cost of the first renewal, the lease then obtained having run out in his lifetime; and he would also be bound to contribute in proportion to his enjoyment towards the expense of the further lease which was subsisting at her decease, the residue of which expense would fall upon C., the remainder-man, he having participated in the benefit of such second renewal. See *Allan v. Backhouse*, 2 Ves. & Bea. 65.

The question as to the proportion in which the expenses are to be borne by the persons beneficially entitled, is obviously distinct from the question as to the manner of raising them; for when a testator or settlor directs that the fund shall be raised by mortgage, he does not thereby necessarily mean to create a permanent charge on the *corpus* of the property, of which the tenant for life is to keep down the interest only; nor does a direction to accumulate the annual rents necessarily import an intention to throw the expense exclusively on the tenant for life, because in either case the settlement or will merely prescribes the manner in which the fund is to be raised by the trustees in the first instance, leaving it to the rule of equity to determine on whom the charge shall ultimately fall, which, in fact, is only to be ascertained by means of subsequent events; for, when a renewal takes place, it can never be known what will be the proportion to be contributed by the tenant for life, until it shall have been ascertained how much of the renewed lease runs out during his interest.

In general, the proportion in which a tenant for life and remainder-man are to contribute to a renewal would be governed by the same rule, whether the renewal was the voluntary act of, or had been made incumbent upon, the tenant for life; with this important difference, however, that, if a tenant for life is bound to renew, he cannot require that any allowance should be made for the portion of the old term which he surren-

Distinction  
where renewal  
is enjoined, and  
where it is vo-  
luntary.



the said [*intended wife*] at or immediately before the execution of these presents, the receipt whereof is hereby acknowledged, she the said [*intended wife*], with the privity and consent of the said [*intended husband*], (testified by his execution here-

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FOR LIVES.

dered for the purpose of effecting the renewal, as he would be entitled to do where the renewal is voluntary. For instance, suppose a Dean and Chapter lease for forty years, which the lessors are in the habit of renewing every fourteen years, is bequeathed to A. for life, and then to B. absolutely, without any direction respecting the renewal; and A. (the fourteen years having expired in his lifetime) obtains a renewed lease in consideration of a surrender of the subsisting term, of which twenty-six years are then unexpired, and afterwards lives thirty years, it is conceived, that, in computing the proportions in which A. and B. are to contribute to the renewal, A. would have to pay only for the four years' enjoyment derived by him out of the new lease. On the same principle, if A. had died before the expiration of the twenty-six years surrendered by him, B. must, in order to entitle him to the benefit of the renewal, have taken upon himself the entire expense of it, by repaying to A. the principal sum advanced by him and interest, because the old term surrendered by A., and which he was not bound to surrender, would have outlasted his interest, so that he has actually derived no advantage from the renewal. But if, in either of the instances just stated, A. had renewed in pursuance of a direction in the will, he must have contributed to the expense of the renewal in proportion to his enjoyment under the new lease, without regard to the duration of the surrendered term, the relinquishment of which was a condition imposed upon him by the instrument creating his interest. The Editor is not aware of any direct authority for the distinction here suggested, but it seems to be the result of the general principles deducible from the cases.

It remains to be observed, that an annuitant is not bound to contribute towards the expense of a renewal, though the annuity will remain a charge on the new interest, and though the party effecting the renewal was under no personal obligation to pay the annuity or renew the lease. *Maxwell v. Ashe*, 1 B. C. C. 444, n.; *Moody v. Matthews*, 7 Ves. 174.

Annuitant not bound to contribute towards renewal.

But however clear is the principle that regulates the proportions in which charges of renewal are to be distributed among the parties beneficially interested, yet there is enough of difficulty in its application to render it advisable, that, in general (especially where the property is small), the proportions should be absolutely fixed by the instrument creating the obligation to renew, or that a discretionary power of apportioning the charge should be given to the trustees. The precedent in the text and the variations in the notes exemplify the modes of carrying these suggestions into effect.

Expediency of declaring proportions of contribution in the instrument directing the renewal.

RENEWABLE  
LEASEHOLDS  
FOR LIVES.

Parcels.

And all the es-  
tate, &c.

*Habendum.*

In trust for wife  
until the mar-  
riage, and then  
in trust for the  
husband for life,  
with remainder  
to the wife for  
life.

And after the  
death of both, to  
their respective

of), DOTH by these presents grant, bargain, sell, and release unto the said [*trustees*], their executors, administrators, and assigns, (in the actual possession of the said [*trustees*] now being, by virtue of a bargain and sale for a year made to them by the said [*intended wife*] by an indenture bearing date the day next before the day of the date hereof), ALL AND SINGULAR the ——— and premises hereinbefore described, and all other the hereditaments and premises comprised in the hereinbefore recited indenture of lease, together with all and singular the rights, members, and appurtenances to the same premises belonging; And all the estate, right, title, interest, benefit of renewal, claim and demand whatsoever, both at law and in equity, of her the said [*intended wife*], in, to, and out of the said hereditaments and premises; together with the hereinbefore recited indenture of lease, and the full benefit thereof; TO HAVE AND TO HOLD the said ——— and premises hereby released, or intended so to be, unto and to the use of the said [*trustees*], their executors, administrators, or assigns (*b*), henceforth for and during the lives of the said [*three cestuis que vie*], and the lives and life of the survivors and survivor of them, and for all other the estate and interest of her the said [*intended wife*] in the said premises, under or by virtue of the hereinbefore recited indenture of lease or otherwise, upon the trusts nevertheless, and for the purposes, hereinafter expressed concerning the same; that is to say, *In trust* for the said [*intended wife*], her executors, administrators, and assigns, until the solemnization of the said intended marriage; and after the solemnization thereof, *Upon trust*, from time to time, by and out of the rents and profits of the said premises, to pay the rent and perform the covenants in the hereinbefore recited indenture of lease, and in every renewed lease thereof, reserved and contained on the lessee's or tenant's part to be paid and performed, and to pay the residue or surplus of the said rents and profits to the said [*intended husband*] or his assigns during his life; *And* immediately after the death of the said [*intended husband*],

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(*b*) Leaseholds for lives may be limited indifferently, either to real or personal representatives. The latter seems to be a preferable mode of vesting such estates in trustees, as it prevents them from devolving to an infant heir.

*Then upon trust* to pay the said residue or surplus of the rents and profits of the said premises to the said [*intended wife*] or her assigns during her life, and after the decease of the survivor of them, the said [*intended husband*] and [*intended wife*], *Upon trust* to convey and assure the said premises unto and equally among [*name*], the only child of the said [*intended wife*], and [*names*], the two children of the said [*intended husband*], and their respective executors, administrators, and assigns, in equal shares, as tenants in common, and upon or for no other trust, intent, or purpose whatsoever. AND the said [*intended husband*] doth hereby for himself, his heirs, executors, and administrators, covenant with the [*trustees*], their executors, administrators, and assigns, that, in case the said intended marriage shall take effect, he the said [*intended husband*] will from time to time, during his life, so often as and when any of the persons for whose lives the said premises are holden shall die; and also, so often as and when any of the persons who shall be named as the *cestuis que vie* in any new lease to be granted of the same premises as hereinafter mentioned shall happen to die, within the space of six calendar months next following the death of every such person respectively, at the costs and charges of him the said [*intended husband*], renew and take, or cause to be renewed and taken, from the said [*lessor*], his heirs and assigns, or such other person or persons as for the time being shall be entitled to grant the same, a new lease of the same leasehold premises for three lives (whereof the life of the said [*intended wife*], whilst living, shall always be one), at and under the like yearly rent and covenants as in and by the said lease, by virtue of which the same premises are now held, are reserved and contained; *So as* that there may be a subsisting estate for three lives at least in the said leasehold premises at the time of the decease of the said [*intended husband*]; *And* that he the said [*intended husband*] shall and will, from time to time, immediately after every such renewal, in case the renewed lease to be obtained shall be granted to him, at his own costs and charges, well and effectually convey, assign, and assure, or cause and procure to be conveyed, assigned, and assured, the said leasehold premises unto the said [*trustees*], their executors, administrators, and assigns, for and during the lives of the

RENEWABLE  
LEASEHOLDS  
FOR LIVES.

children by  
former marriages.

Covenants by  
the husband to  
renew leases,  
so as to keep up  
three lives.

Covenant by  
husband after  
the granting of  
every such new  
lease to convey  
to trustees.

RENEWABLE  
LEASEHOLDS  
FOR LIVES.

Power for trustees to renew upon the neglect, and also after decease, of husband.

persons for whose lives the same lease or leases shall be respectively granted, upon the trusts and for the intents and purposes hereinbefore expressed concerning the same, or such of them as shall be then subsisting or capable of taking effect. *Provided always, and it is hereby declared and agreed*, that in case the said [*intended husband*], his heirs, executors, and administrators shall neglect to renew the present lease or any future lease to be granted of the said premises as aforesaid, by the space of six calendar months next after the dropping of any such life as aforesaid, contrary to the covenant for that purpose hereinbefore contained, and also in case any of the lives for which such lease shall for the time being be holden shall happen to drop after the decease of the said [*intended husband*], and during the life of the said [*intended wife*], then and in every such case, and so often as the same shall happen, it shall be lawful for the trustees or trustee for the time being of these presents, at their or his own discretion, to renew and take such new lease of the same premises in the manner hereinbefore mentioned; And that they the said trustees or trustee shall and may by and out of the rents and profits of the said premises, or by mortgage thereof, as they or he in their or his discretion shall think proper, levy and raise sufficient money to answer and defray the fines, and all other charges incident to every such renewal, and apply the same accordingly.

Declaration that new leases shall be subject to the trusts.

*And it is hereby agreed and declared*, that the said leasehold premises hereby granted and released, and every new lease of the same or any part thereof, upon any and every renewal to be obtained thereof as aforesaid, shall, from time to time and at all times, be subject to, and the said [*trustees*], their executors, administrators, or assigns, shall stand and be possessed and interested of and in the same leasehold premises, and the same shall be and remain for and during the continuance of every such new lease respectively, upon the same trusts and for the same intents and purposes as are hereinbefore expressed concerning the same premises, or such of them as shall be then subsisting or capable of taking effect.

Indemnity to mortgagees and others paying trust monies.

*Provided always, and it is hereby declared and agreed*, that every receipt which shall be given by the trustees or trustee for the time being of these presents, to any mortgagee or other person or persons paying monies to such trustees or trustee



under or by virtue of the trusts hereinbefore contained, shall effectually discharge the person or persons paying the same from all responsibility in respect of the application thereof; and also, that no mortgagee shall be obliged to inquire into the necessity, propriety, or occasion of any mortgage being made by the said trustees or trustee for the time being, by virtue of the power hereinbefore contained. *Provided also, and it is hereby further declared and agreed*, that the power hereinbefore given to the trustees of these presents to raise by mortgage the charges and expenses of the renewals hereby directed to be made, shall not, in any degree, restrict or diminish the liability of the said [*intended husband*], his heirs, executors, and administrators, under his covenant hereinbefore contained, to pay the said charges and expenses in ease and exoneration of the said premises, which shall or may happen to be charged therewith by virtue of the same power. *Provided also, and it is hereby further declared and agreed*, that in case any renewal or renewals shall take place after the decease of the said [*intended husband*], and during the life of the said [*intended wife*], by virtue of the power in that behalf hereinbefore contained (*b*), then and in every such case the persons who shall be beneficially interested in or entitled to the premises under or by virtue of the ultimate trust hereinbefore contained, shall be liable to pay and bear the full amount of the charges and expenses incurred in every such renewal, with simple interest thereon,

RENEWABLE  
LEASEHOLDS  
FOR LIVES.

Power of mortgaging not to exonerate husband.

Proportions in which parties are to contribute towards renewal expenses.

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(*b*) Sometimes it may be advisable to give to the trustees a discretionary power of fixing the proportions, and then the following should be substituted for the clause in the text:—

“then and in every such case the trustees or trustee for the time being of these presents are and is hereby empowered and directed, in their or his absolute discretion, to declare and determine in what shares and proportions the charges and expenses of renewing the said lease shall be paid and borne by the person or persons who for the time being shall be interested in the premises under or by virtue of the trusts hereinbefore contained, and who shall participate in the benefit of such renewal or renewals respectively; and the determination of such trustees or trustee in the premises shall be binding and conclusive on all the persons claiming under or by virtue of the trusts herein contained.”

Power to trustees to fix the proportions of contribution to expenses of renewal.

RENEWABLE  
LEASEHOLDS  
FOR LIVES.

Direction to renew not to be compulsory if excessive fine is demanded.

at the rate of 5*l.* per cent. per annum, up to the time of the decease of the said [*intended wife*], subject, nevertheless, to a deduction thereout at the rate of 10*l.* per cent. on the aggregate amount of principal and interest for each and every year which she shall have held and enjoyed the premises after the commencement of such renewed lease or leases respectively, and so in proportion for any less period than a year, rests being made at the end of each successive year, which deducted sum shall be the share or proportion to be borne by the said [*intended wife*] of the said charges or expenses of renewal in respect of her interest for life, under or by virtue of the trusts hereinbefore contained. *Provided nevertheless*, and it is hereby declared, that this present clause shall not oblige the persons interested in the premises under the ultimate trust hereinbefore contained to pay or contribute towards the expense of any renewal effected during the life of the said [*intended wife*], unless the additional life inserted in the renewed lease shall be in being at the time of the decease of the said [*intended wife*] (*c*), nor unless such decease shall happen within ten years after the commencement thereof. *Provided also, and it is hereby further declared and agreed*, that, in case the said [*lessor*], his heirs or assigns, shall, at any time or times hereafter, refuse or decline to renew, on fair and reasonable terms, the lease for which the said premises shall for the time being be holden, the said [*intended husband*], or the trustees for the time being of these presents, shall not be bound or compellable, under or by virtue of the covenant and trusts hereinbefore contained, to accept and take a renewed lease from the said [*lessor*], his heirs or assigns; but no fine shall be deemed to be excessive or unreasonable unless the same shall exceed the sum paid for the last renewal of the lease of the said premises, with

Observations on the clause regulating the proportions.

(*c*) This is merely suggested as exhibiting a mode of ascertaining the proportions by a very simple arithmetical calculation. In fact, it is almost as easily applied as the old rule, which charged the tenant for life with one-third and the remainder-man with two-thirds of the renewal fine, (*ante*, p. 350), and certainly has the merit of attaining a fairer result, though it does not adjust the proportions with the same exactness as the present rule of equity. Often, however, it is of more importance to the parties, especially in small transactions, that some certain standard should be supplied, than that more equal justice should be attained by a more costly and elaborate process.

such an advance or increase thereon as shall be proportioned to the improved value of the premises. (*Add power to lease and of appointing new trustees, and indemnity to them*). *Provided also, and lastly it is hereby declared and agreed*, that it shall be lawful for the said [*intended husband*] and [*intended wife*], at any time during their joint lives, by any deed or deeds to be duly executed by them, and to be attested by one witness or more, absolutely to revoke and make void all or any of the uses, trusts, powers, provisoes, and declarations hereinbefore declared concerning the said — and premises hereby released, or intended so to be, or any part thereof; and also if the said [*intended husband*] and [*intended wife*] shall think proper so to do, by the same or any other deed to limit and declare new and other uses, trusts, powers, provisoes, and declarations, in lieu of and in substitution for the uses, trusts, powers, provisoes, and declarations which shall have been so revoked and made void, anything hereinbefore contained to the contrary notwithstanding (*d*). IN WITNESS, &c.

RENEWABLE  
LEASEHOLDS  
FOR LIVES.

Power of revocation and new appointment.

(*d*) Powers of revocation are not often inserted in marriage settlements, because it is seldom intended that the interests of the children shall be placed in the power of the parents; and, if it is so intended, a general power of appointment is usually given to them, the effect of which is substantially the same as that of a power of revocation.

Remark upon the power of revocation.

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SETTLEMENT *on Marriage of a* LEASEHOLD HOUSE, *by way of* UNDERLEASE (*a*), *for the benefit of the* INTENDED WIFE *for* LIFE, *and then of the* HUSBAND. (*A short Form*).

UNDERLEASE  
ON MARRIAGE.

**THIS** INDENTURE, made the — day of —, 18—, BETWEEN [*intended wife*], of &c., of the first part; [*intended husband*], of &c., of the second part; and [*trustees*], of

Parties.

(*a*) The settlement obviously is made by way of underlease, in order to avoid rendering the trustees liable to the rent and covenants of the lease; as to which *vide ante*, p. 187.

UNDERLEASE  
ON MARRIAGE.

Recital of lease.

— of intended  
marriage.

*Testatum.*

In consideration  
of intended  
marriage, wife  
demises lease-  
holds to trustees.

*Habendum.*

&c., of the third part: WHEREAS, by indenture of lease, bearing date on or about the — day of —, and made between [*lessor*], of —, of the one part, and the said [*intended wife*], of the other part, the said [*lessor*] did demise unto the said [*intended wife*], her executors, administrators, and assigns, *All that* messuage, tenement, or dwelling-house, with the yard, shops, and buildings, and appurtenances thereunto belonging, then late in the occupation of —, and then of the said [*intended wife*], situate, lying, and being on the south side of — street, in the parish of St. James, Westminster, and numbered —, and having the several abutments, and being of the several dimensions therein mentioned, together with the ground and soil whereon the said messuage or dwelling-house, shops, buildings, and premises thereby demised stood, and all and singular the appurtenances to the said premises belonging, together also with the use of all and singular the goods, utensils, fixtures, and other things particularly mentioned and specified in the schedule or inventory thereof thereunder written; *To hold* the same unto the said [*intended wife*], her executors, administrators, and assigns, from the — day of — then last, for the term of twenty-one years thence next ensuing, subject nevertheless to the payment of the rent, and the observance and performance of the covenants therein reserved and contained on the tenants' and lessees' part to be paid, observed, and performed. AND WHEREAS a marriage is intended to be shortly solemnized between the said [*intended husband*] and [*intended wife*]. NOW THIS INDENTURE WITNESSETH, that, in contemplation and in consideration of the said intended marriage, the said [*intended wife*], with the privity of the said [*intended husband*], *Doth*, by these presents, demise and lease unto the said [*trustees*], their executors, administrators, and assigns, *All that* and those the said messuage or dwelling-house, shops, and buildings hereinbefore described, and all and singular the goods, utensils, fixtures, and other the premises comprised in the hereinbefore recited indenture of lease; which said premises are now in the occupation of [*tenant*], as tenant to the said [*intended wife*], with their appurtenances; *To HAVE AND TO HOLD* the said messuage and other the premises hereby demised unto the said [*trus-*



*tees*], their executors, administrators, and assigns, henceforth during all the residue now unexpired of the said term of twenty one years, except the last day of the same term, and for all other the term, if any, of the said [*intended wife*] in the premises, except the last day thereof, upon the trusts following, that is to say, until the said intended marriage shall be solemnized, In trust for the said [*intended wife*], her executors, administrators, and assigns, and after the solemnization thereof, *Upon trust*, from time to time, out of the rents and profits of the said premises, to pay the rent and perform the lessee's covenants reserved and contained by and in the hereinbefore recited indenture of lease, and pay the residue or surplus of such rents and profits unto the said [*intended wife*], during her life, for her separate use, free from the control and debts of the said [*intended husband*], and any future husband with whom she may intermarry, and her receipts alone to be sufficient discharges for the same; And after the decease of the said [*intended wife*], In trust for the said [*intended husband*], his executors, administrators, or assigns. And upon or for no other trust, intent, or purpose whatsoever (*b*). IN WITNESS, &c.

UNDERLEASE  
ON MARRIAGE.

Upon trusts.

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(*b*) Where real or personal estate is settled for the benefit of the intended husband and wife merely, and the latter is not, either by the terms of the instrument\*, or the nature of the property†, restrained from alienation, there seems to be no occasion for the insertion of powers of leasing and sale, and of appointing new trustees, &c., because the husband and wife, possessing between them the entire interest in the property, are fully competent to the exercise of every act of absolute ownership.

Remark on the  
absence of powers  
in the pre-  
cedent in the  
text.

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\* *Vide* note to the next precedent, p. 362.

† The reader scarcely need be reminded that allusion is here made to reversionary *choses en action*.

TO RENDER  
LIFE INTEREST  
OF INTENDED  
WIFE UNALI-  
ENABLE.

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SETTLEMENT *by a WIDOW on her SECOND MARRIAGE of a LIFE INTEREST in certain TRUST FUNDS, settled to her separate Use, on her FORMER MARRIAGE, the Object of the present Settlement being to RESTRAIN ALIENATION during the INTENDED COVERTURE (a).*

Parties.

THIS INDENTURE, made the — day of —, in the year of our Lord 18—, BETWEEN [*intended husband*],

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Recent doctrine  
as to restraints  
on alienation by  
married women.

(a) The attention of the profession has been again drawn by several recent decisions to the subject of clauses restraining anticipation by married women\*. *Woodmeston v. Walker*, 2 Russ. & M. 197; *Jones v. Salter*, Id. 208; *Brown v. Pocock*, Id. 210; *Newton v. Reid*, 4 Sim. 141. The three first of these cited cases indicate only that an unmarried woman, on whom a prohibition to alien is imposed, may, while she continues discover, dispose of her interest in spite of the restriction; which had been previously decided in the case of *Barton v. Briscoe*, Jacob, 603, stated *ante*, Vol. 6, p. 37. In the case of *Woodmeston v. Walker*, a testator had directed an annuity to be purchased for the separate and unalienable use of an unmarried woman, who was held to be entitled (according to the general rule applicable to such bequests, *vide post*, Vol. 10, p. 253), to elect to take the price or value instead of the annuity.

Case of *Newton v. Reid*.

The case of *Newton v. Reid*, however, requires a more particular examination, as it would seem to authorize the conclusion, that a clause in a will restraining anticipation is ineffectual, even during coverture, in regard to a female who was discover when the will took effect, *i. e.* at the death of the testator. The case was as follows: A., by his will, dated 7th of January, 1800, directed his trustees to divide the produce arising from the sale of his real and personal estate into seven equal parts, one equal seventh part of which he gave to his daughter, Mary Newton, for her own sole and separate use and benefit, first reserving thereout a sufficient sum to purchase an annuity of 50*l.* for the life of his said daughter, which he directed his trustees to hold in their names, from time to time, during the life of his daughter, and to pay and apply the same, half-yearly, into the

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\* As to the aliening power of *femes covertes* over their separate property, *vide ante*, Vol. 6, p. 30, Vol. 9, p. 102.

of &c., of the one part, and [*intended wife*], of &c., of the other part; (*recite settlement executed on the former mar-*

Recital of former marriage settlement.

proper hands of his daughter, whose receipt alone, from time to time, notwithstanding any husband she might thereafter have, should be a sufficient discharge, it being his express desire that the annuity should not be subject to the debts, management, control, will, or engagements of any husband she might have; *but that she should not be at liberty, in any way whatever, to sell, assign, or in any way dispose of the annuity, or, if she did so, the testator declared such sale void and of no effect, his intention being, if any accident in life should unfortunately happen to her, that she should be kept from want.* And the testator gave unto his daughter, Ann Newton, one other seventh part of all his property, with a substitution of her children (if any) in the event of her dying under the age of twenty-one years; but the testator further willed and desired that the said seventh part or share should likewise be subject and liable to a sufficient sum, that\* the trustees should purchase another annuity of 50*l.* per annum for the life of his daughter Ann; which he directed his trustees to pay to her half-yearly, on the same express terms and conditions as therein-before particularly mentioned respecting his daughter Mary, it being for the very same reasons so given to her. Ann Newton married George Appleton, and by an indenture, dated the 8th February, 1821, in consideration of 270*l.* then owing by Appleton to a banking firm, and of 250*l.* paid by them to him, Appleton and his wife assigned to the bankers all the sum and sums of money, chattels, and effects whatsoever belonging to them (Appleton and wife), or to which they, or either of them, were or should thereafter become entitled under the said will, upon trust for securing the re-payment of the two sums of 270*l.* and 250*l.*, with interest. By another indenture, the further sum of 1000*l.* was secured to the bankers in like manner. Under the proceedings in the cause certain sums of stock and cash were carried over to "Ann Appleton's annuity and residuary account." A petition was presented by Appleton and his wife, insisting that the restrictions contained in the will against the sale and disposition of the annuity of 50*l.* for the life of Ann Appleton were void and of no effect, and stating that they were desirous that such annuity should not be purchased, and praying that the stock might be sold, and the proceeds, with the cash, applied in payment of the bankers' debt, and the residue paid to George Appleton. The counsel for the petitioners cited *Barton v. Briscoe*, Jac. 603. Sir L. *Shadwell*, V. C., held, that the annuity not being given over upon alienation, the restrictions were void, and ordered according to the prayer.

\* This agrees literally with the language of the will as reported.

TO RENDER  
LIFE INTEREST  
OF INTENDED  
WIFE UNALI-  
ENABLE.

*riage of the intended wife, settling certain funds in trust for the separate use of the intended wife for her life).* AND

Remarks upon  
the case of *Newton v. Reid*.

Though the reported judgment of the Vice-Chancellor in the case of *Newton v. Reid* is very jejune in point of argument, yet, as the case of *Barton v. Briscoe* had been cited to the Court, the principle may be supposed to be, that, in order to render effectual a trust restraining alienation, the *cestui que trust* must be covert when the instrument creating the restriction takes effect. Can it, however, make any solid difference whether the coverture exists at that period or supervenes? The *cestui que trust* undoubtedly might, before she contracted the disability of coverture, have escaped from the restriction by assigning her interest; but, if she has not availed herself of this privilege, and the coverture occurs during the continuance of the restraint on her aliening power, the inquiry into her condition at the period of the original imposition of the restriction would seem to be unimportant. The two circumstances of coverture and restraint on alienation having in event concurred, it matters not, one should have thought, what was the order in which they happened. The ground taken by the Master of the Rolls, (Sir *T. Plumer*), in *Barton v. Briscoe*, that the allowance of a restraint on alienation was a protection to *coverture*, and not to *females*, whether covert or not, was intelligible and convenient, as it rendered the restriction co-extensive with the marital influence, against which it was intended to protect; while the doctrine of the case of *Newton v. Reid* confines that protection to one class of cases (namely, to those in which the coverture exists when the restriction is imposed), and would require, that, in all *other* cases, in order to effectuate the settlor's or testator's object of preventing alienation, the interest of the female *cestui que trust*, whether married or not *at the time of alienation*, should be thereupon made to cease in like manner as is usually done where restrictions of this nature are imposed on male persons.

The point is especially important in relation to marriage settlements; for, as the intended wife, though contemplating coverture, is actually discoverd at the time of the execution of the deed imposing the restriction, the doctrine of *Newton v. Reid* might seem to frustrate any attempt to restrain alienation during the coverture then impending. This, however, surely would not be submitted to, as it would banish this protective restriction from those instruments in which it is most wanted, and would give to settlements after marriage a superiority of efficacy, in this particular, over those which are pre-nuptial, no less anomalous than inconvenient. The great probability is, therefore, that the doctrine will be held not to apply to such settlements, on the ground that a woman, about to contract coverture, is to be considered in regard to it as un-



WHEREAS the said [*former husband*] departed this life on the — day of —, leaving the said [*intended wife*], his

—Death of former husband.

distinguishable from a person actually covert. To get rid of the doctrine entirely, however, would be far better than to narrow its limits; it is erroneous in principle and mischievous in practice. It may be hoped, that the litigation, which the present state of the decisions cannot fail to produce, will issue in the re-establishment of the rule, that, during coverture, as well future as immediate, alienation may be restrained, unless the *cestui que trust*, while sole, exerts her aliening power.

The bearing of the preceding remarks on the form in the text will be readily perceived. The settlement executed on the first marriage of the intended wife is supposed to have given her a life interest in the trust funds for her separate use, but without restraining alienation during any future\* coverture. But, even if the restriction had professed to go to this extent, it is doubtful, according to *Newton v. Reid*, whether it would have been effectual, even though the validity of a restraint on anticipation in a marriage settlement, *during the then intended coverture*, were, upon the principle already suggested, well established. If alienation, during the then contemplated coverture, cannot be restrained, the present deed is nugatory. Supposing the general doctrine of the admissibility of restraints on alienation applicable to *future* coverture to be established, in opposition to *Newton v. Reid*, ante-nuptial settlements may sometimes be executed for the purpose of preventing the suspension of the aliening power consequent on the intended coverture. For instance, suppose that a testator gives to his daughter, then being a married woman, a life interest in certain trust funds for her separate use, without power of anticipation during her then present or any future coverture. Her husband dies and she marries again. Before the case of *Newton v. Reid*, no one would have doubted, that, if the *cestui que trust*, while sole, had not emancipated herself from the restriction, it would have bound her during her second coverture. Previously to the second marriage, however, she may, (according to *Barton v. Briscoe*, and other cases of unquestionable authority), by exercising the aliening power, which is inseparably incident to a state of discovery, settle her life interest to her separate use, in exclusion of her intended husband, *but without any restraint on alienation*. A deed having this object, (which is precisely the converse of that of the precedent in the text), would differ but little from the precedent in the text beyond the mere omission of the words restricting alienation.

Remarks on the precedent in the text.

\* The word "future" is here and elsewhere in these observations used as designating a coverture subsequent to the one about to be contracted by the intended wife.

TO RENDER  
LIFE INTEREST  
OF INTENDED  
WIFE UNALI-  
ENABLE.

—Agreement  
for intended  
marriage and  
for settlement  
thereupon.

*Testatum.*

Declaration of  
trusts.

widow, him surviving. AND WHEREAS a marriage is intended to be shortly solemnized between the [*intended husband*] and [*intended wife*]. AND WHEREAS, upon the treaty for the said intended marriage it was agreed that the life interest of the said [*intended wife*] in the funds and securities comprised in the hereinbefore recited indenture should be settled in the manner hereinafter mentioned. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration and contemplation of the said intended marriage, it is hereby declared and agreed by and between the said parties to these presents, and particularly the said [*intended wife*], with the privity and consent of the said [*intended husband*], testified by his execution of these presents, doth hereby direct and declare that the said [*trustees*] and the survivor of them, and the executors or administrators of such survivor, or other the trustees or trustee for the time being of the hereinbefore recited indenture of settlement, shall stand and be possessed of and interested in the dividends, interest, and annual income to which the said [*intended wife*] is so as aforesaid entitled for her life, under or by virtue of the trusts of the said indenture, upon the trusts and for the intents and purposes hereinafter expressed concerning the same; that is to say, *Upon trust* from and immediately after the solemnization of the said intended marriage, and thenceforth during the joint natural lives of the said [*intended husband*] and the said [*intended wife*], his said intended wife, to pay the dividends, interest, and annual income arising from the said trust monies, stocks, funds, and securities unto the said [*intended wife*] for her sole and separate use and benefit, exclusively of and free from the debts and control of the said [*intended husband*], and so that the said [*intended wife*] shall have no power to alien, charge, or in any manner anticipate the said dividends, interest, and annual income, or any part thereof; and *upon further trust* to stand possessed of and interested in the said dividends, interest, and annual income, as well after the determination as before the commencement of the trust hereinbefore limited and contained, and subject thereto, upon the same trusts, and to and for the same ends, intents, and purposes, as in and by the hereinbefore recited indenture are expressed and declared concerning the same, or upon and

for such of the same trusts, ends, intents, and purposes as are now subsisting or capable of taking effect, and upon, to, or for no other trust, intent, or purpose whatsoever. *Provided nevertheless, and it is hereby declared*, that nothing herein contained shall extend or be construed to extend to prevent or disable the said [*intended wife*] from exercising or concurring in all or any of the powers or authorities which in and by the hereinbefore recited indenture are vested or reposed in the said [*intended wife*], or to or in the exercise whereof it is thereby required that she should consent or concur, any rule of equity to the contrary notwithstanding. IN WITNESS, &c.

TO RENDER  
LIFE INTEREST  
OF INTENDED  
WIFE UNALI-  
ENABLE.

The present deed not to restrain the intended wife from exercising or concurring in powers.

SETTLEMENT *previously to MARRIAGE, by way of BARGAIN and SALE in fee by a TENANT in TAIL, under Stat. 3 & 4 Will. 4, c. 74 (a), (to be inrolled in Chancery), to TRUSTEES for SALE, who are to stand POSSESSED of the MONEY upon the TRUSTS declared by a Deed of even Date, (next Precedent).*

BARGAIN AND  
SALE IN FEE  
UPON TRUST  
FOR SALE.

**THIS** INDENTURE, made the, — day of —, 18—, BETWEEN [*intended wife*], of &c., of the first part; [*intended* Parties.

- (a) "AN ACT FOR THE ABOLITION OF FINES AND RECOVERIES, AND FOR THE SUBSTITUTION OF MORE SIMPLE MODES OF ASSURANCE." Stat. 3 & 4 Will. 4, c. 74.

EXPLANATION OF WORDS AND EXPRESSIONS.

Sect. 1 enacts, "That in the construction of this act the word 'lands' shall extend to manors, advowsons, rectories, messuages, lands, tenements, tithes, rents, and hereditaments of any tenure (except copy of court roll), and whether corporeal or incorporeal, and any undivided share thereof, but, when accompanied by some expression including or denoting the tenure by copy of court roll, shall extend to manors, messuages, lands, tenements, and hereditaments of that tenure, and any undivided share thereof; and the word 'estate' shall extend to an estate in equity as well as at law, and shall also extend to any interest, charge, lien, or incumbrance in, upon, or affecting lands, either at law or in equity, and shall also extend to any interest, charge, lien, or incumbrance in, upon, or affecting money subject to be invested in the purchase of lands; and

Meaning of certain words and expressions.  
"Lands."  
"Estate."

Recital of will. *husband*], of &c., of the second part; and [*trustees*], of &c., of the third part; (*reciting will of the uncle of intended*

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|                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|-------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| "Base fee."                                           | the expression 'base fee' shall mean exclusively that estate in fee simple into which an estate tail is converted where the issue in tail are barred, but persons claiming estates by way of remainder or otherwise are                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| "Estate tail."                                        | not barred; and the expression 'estate tail,' in addition to its usual meaning, shall mean a base fee into which an estate tail shall have been                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| "Actual tenant in tail."                              | converted; and the expression 'actual tenant in tail' shall mean exclusively the tenant of an estate tail which shall not have been barred, and such tenant shall be deemed an actual tenant in tail, although the estate                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| "Tenant in tail."                                     | tail may have been divested or turned to a right; and the expression 'tenant in tail' shall mean not only an actual tenant in tail, but also a                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| "Tenant in tail entitled to a base fee."              | person who, where an estate tail shall have been barred and converted into a base fee, would have been tenant of such estate tail if the same                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| "Money subject to be invested," &c.                   | had not been barred; and the expression 'tenant in tail entitled to a base fee' shall mean a person entitled to a base fee, or to the ultimate beneficial interest in a base fee, and who, if the base fee had not been created, would have been actual tenant in tail; and the expression 'money subject to be invested in the purchase of lands' shall include money, whether raised or to be raised, and whether the amount thereof be or be not ascertained, and shall extend to stocks and funds, and real and other securities, the produce of which is directed to be invested in the purchase                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| "Person."<br>Number and gender.                       | of lands, and the lands to be purchased with such money or produce shall extend to lands held by copy of court roll, and also to lands of any tenure, in Ireland or elsewhere out of England, where such lands or any of them are within the scope or meaning of the trust or power directing or authorizing the purchase; and the word 'person' shall extend to a body politic, corporate, or collegiate, as well as an individual; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing; and every word importing the plural number shall extend and be applied to one person or thing as well as several persons or things; and every word importing the masculine gender only shall extend and be applied to a female as well as a male; and every assurance already made or hereafter to be made, whether by deed, will, private act of Parliament, or otherwise, by which lands are or shall be entailed, or agreed or directed to be entailed, shall be |
| Settlement to import any assurance by deed, will, &c. | deemed a settlement; and every appointment made in exercise of any power contained in any settlement, or of any other power arising out of the power contained in any settlement, shall be considered as part of such settlement, and the estate created by such appointment shall be considered as having been created by such settlement; and where any such settlement is or shall be made by will, the time of the death of the testator shall be considered the time when such settlement was made: Provided always, that those words and expressions occurring in this                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |



*wife, whereby the hereditaments hereinafter bargained and sold were devised to the mother of the intended wife for life,*

BARGAIN AND  
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clause, to which more than one meaning is to be attached, shall not have the different meanings given to them by this clause in those cases in which there is any thing in the subject or context repugnant to such construction.

Stat. 3 & 4  
Will. 4, c. 74.

#### CLAUSES RELATING TO FINES AND COMMON RECOVERIES.

Sect. 2. "That after the 31st day of December, 1833, no fine shall be levied or common recovery suffered of lands of any tenure, except where parties intending to levy a fine or suffer a common recovery shall, on or before the 31st day of December, 1833, have sued out a writ of dedimus, or any other writ, in the regular proceedings of such fine or recovery; and any fine or common recovery which shall be levied or suffered contrary to this provision shall be absolutely void.

No fine or recovery to be levied or suffered after the 31st of Dec. 1833.

Sect. 3. "That in case any person shall, after the 31st day of December, 1833, be liable to levy a fine or suffer a common recovery of lands of any tenure, or to procure some other person to levy a fine or suffer a common recovery of lands of any tenure, under a covenant or agreement already entered into or hereafter to be entered into, before the 1st day of January, 1834, then and in such case, if all the purposes intended to be effected by such fine or recovery can be effected by a disposition under this act, the person liable to levy such fine or suffer such recovery, or to procure some other person to levy such fine or suffer such recovery, shall, after the 31st day of December, 1833, be subject and liable under such covenant or agreement to make or to procure to be made such a disposition under this act as will effect all the purposes intended to be effected by such fine or recovery; but if some only of the purposes intended to be effected by such fine or recovery can be effected by a disposition under this act, then the person so liable to levy such fine or suffer such recovery, or to procure some other person to levy such fine or suffer such recovery as aforesaid, shall, after the 31st day of December, 1833, be subject and liable under such covenant or agreement to make or procure to be made such a disposition under this act as will effect such of the purposes intended to be effected by such fine or recovery as can be effected by a disposition under this act; and in those cases where the purposes intended to be effected by such fine or recovery, or any of them, cannot be effected by any disposition under this act, then the person so liable to levy such fine or suffer such recovery, or to procure some other person to levy such fine or suffer such recovery as aforesaid, shall, after the 31st day of December, 1833, be liable under such covenant or agreement to execute or to procure to be executed some deed, whereby the person intended to levy such fine or suffer such recovery shall declare his desire that such deed shall have the same operation and effect as such

Persons liable, after 31st Dec. 1833, to levy fines or suffer recoveries under covenants, to effect the purposes intended by means of this act; but in any case where the purpose of a fine or recovery cannot be so effected the persons liable to levy fines or suffer recoveries shall execute a deed, which shall have the same operation as the fine or recovery.

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*with remainder to her children in tail, and that she was the only child of the mother, who had lately departed this*

Stat. 3 & 4  
Will. 4, c. 74.

Fines and recoveries of lands in ancient demesne, when levied or suffered in a superior court, may be reversed as to the lord by writs of deceit, the proceedings in which are now pending, or by writs of deceit hereafter to be brought, but shall be as valid against the parties thereto, and persons claiming under them, as if not reversed as to the lord.

fine or recovery would have had if the same had been actually levied or suffered; and the deed by which such declaration shall be made shall, if none of the purposes intended to be effected by such fine or recovery can be effected by a disposition under this act, have the same operation and effect in every respect as such fine or recovery would have had if the same had been actually levied or suffered; but if some only of the purposes intended to be effected by such fine or recovery can be effected by a disposition under this act, then the deed by which such declaration shall be made shall, so far as the purposes intended to be effected by such fine or recovery cannot be effected by a disposition under this act, have the same operation and effect in every respect as such fine or recovery would have had if the same had been actually levied or suffered.

Sect. 4. "That no fine already levied in a superior court of lands of the tenure of ancient demesne which hath not been reversed, and no fine hereafter to be levied of lands of that tenure, shall, upon a writ of deceit already brought by the lord of the manor of which the lands were parcel, the proceedings in which are now pending, or upon a writ of deceit which at any time after the passing of this act may be brought by the lord of the said manor, be reversed as to any person except the lord of the said manor; and the court shall order such fine to be vacated only as to the lord of the said manor; and every such fine which may be reversed as to the lord of the said manor upon such writ of deceit as aforesaid shall still remain as good and valid against and as binding upon the conusors thereof, and all persons claiming under them, as such fine would have been if the same had not been reversed by such writ of deceit as aforesaid; and no common recovery already suffered in a superior court of lands of the tenure of ancient demesne which hath not been reversed, and no common recovery hereafter to be suffered of lands of that tenure, shall, upon a writ of deceit already brought by the lord of the manor of which the lands were parcel, the proceedings in which are now pending, or upon a writ of deceit which at any time after the passing of this act may be brought by the lord of the said manor, be reversed as to any person except the lord of the said manor; and the court shall order such recovery to be vacated only as to the lord of the said manor; and every such recovery which may be reversed as to the lord of the said manor upon such writ of deceit as aforesaid shall still remain as good and valid against and as binding upon the vouches therein, and all persons claiming under them, as such recovery would have been if the same had not been reversed by such writ of deceit as aforesaid.

Fines and recoveries of lands in ancient demesne levied or

Sect. 5. "That if at any time before or after the passing of this act a fine or common recovery shall have been levied or suffered, or shall be levied or suffered in a superior court, of lands of the tenure of ancient

*life*). AND WHEREAS a marriage hath been agreed upon and is intended shortly to be solemnized between the said [*in-*—of intended marriage.

demesne, and subsequently to the levying or suffering thereof a fine or common recovery shall have been or shall be levied or suffered of the same lands in the court of the lord of the manor of which the lands had been previously parcel, and the fine or common recovery levied or suffered in such superior court shall not have been reversed previously to the levying of the fine or the suffering of the common recovery in the lord's court, then and in every such case the fine or common recovery levied or suffered in the lord's court shall, notwithstanding the alteration or change of the tenure by the fine or common recovery previously levied or suffered in the superior court, be as good, valid, and binding as the same would have been if the tenure had not been altered or changed; and that in every other case where any fine or common recovery shall at any time before the passing of this act have been levied or suffered in a court whose jurisdiction does not extend to the lands of which such fine or recovery shall have been levied or suffered, such fine or recovery shall not be invalid in consequence of its having been levied or suffered in such court, and such court shall be deemed a court of sufficient jurisdiction for all the purposes of such fine or recovery; and in every other case where persons shall have assumed to hold courts in which fines or common recoveries have been levied or suffered, and such courts shall be unlawful or held without due authority, the fines or common recoveries which at any time before the passing of this act may have been levied or suffered in such unlawful or unauthorized courts shall not be invalid in consequence of their having been levied or suffered therein, and such courts shall be deemed courts of sufficient jurisdiction for all the purposes of such fines or recoveries.

suffered in the manor court, after other fines and recoveries in a superior court, shall be as valid as if the tenure had not been changed.

Fines and recoveries shall not be invalid in other cases, though levied or suffered in courts whose jurisdictions may not extend to the lands therein comprised.

Sect. 6. "That in every case in which at any time, either before or after the passing of this act, the tenure or\* ancient demesne has been or shall be suspended or destroyed by the levying of a fine, or the suffering of a common recovery of lands of that tenure in a superior court, and the lord of the manor of which the lands at the time of levying such fine or suffering such recovery were parcel shall not reverse the same before the 1st day of January, 1834, and shall not by any law in force on the first day of this session of Parliament be barred of his right to reverse the same, such lands, provided, within the last twenty years immediately preceding the 1st day of January, 1834, the rights of the lord of the manor of which they shall have been parcel shall in any manner have been acknowledged or recognised as to the same lands, shall, from the said 1st day of January, 1834, again become parcel of the said manor, and be subject to the same heriots, rents, and services as they would have been subject to if such fine or recovery had not been levied or suf-

Tenure of ancient demesne, where suspended or destroyed by fine or recovery in a superior court, restored in cases in which the rights of the lord of the manor shall have been recognised within twenty years.

\* *Sic*.

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*tended husband*] and [*intended wife*]; and upon the treaty for the said intended marriage, it was agreed, (among other

Stat. 3 & 4  
Will. 4, c. 74.

ferred; and no writ of deceit for the reversal of any fine or common recovery shall be brought after the 31st day of December, 1833.

Fines made valid without amendment.

Sect. 7. "That if it shall be apparent, from the deed declaring the uses of any fine already levied or hereafter to be levied, that there is in the indentures, record, or any of the proceedings of such fine any error in the name of the conusor or conusee of such fine, or any misdescription or omission of lands intended to have been passed by such fine, then and in every such case the fine, without any amendment of the indentures, record, or proceedings in which such error, misdescription, or omission shall have occurred, shall be as good and valid as the same would have been, and shall be held to have passed all the lands intended to have been passed thereby, in the same manner as it would have done if there had been no such error, misdescription, or omission.

Recoveries made valid without amendment.

Sect. 8. "That if it shall be apparent, from the deed making the tenant to the writ of entry or other writ for suffering a common recovery already suffered or hereafter to be suffered, that there is in the exemplification, record, or any of the proceedings of such recovery any error in the name of the tenant, demandant, or vouchee in such recovery, or any misdescription or omission of lands intended to have been passed by such recovery, then and in every such case the recovery, without any amendment of the exemplification, record, or proceedings in which such error, misdescription, or omission shall have occurred, shall be as good and valid as the same would have been, and shall be held to have passed all the lands intended to have been passed thereby, in the same manner as it would have done if there had been no such error, misdescription, or omission.

Saving jurisdiction in cases not provided for.

Sect. 9. "Provided always, That nothing in this act contained shall lessen or take away the jurisdiction of any court to amend any fine or common recovery, or any proceeding therein, in cases not provided for by this act.

Recoveries made valid in certain cases where bargain and sale is not duly inrolled.

Sect. 10. "That no common recovery already suffered or hereafter to be suffered shall be invalid in consequence of the neglect to inrol in due time a bargain and sale purporting to make the tenant to the writ of entry or other writ for suffering such recovery, provided such recovery would have been valid if the bargain and sale purporting to make the tenant to the writ had been duly inrolled.

Recoveries invalid in consequence of there not being proper tenants to the writs of entry, made valid in certain cases.

Sect. 11. "That no common recovery already suffered or hereafter to be suffered shall be invalid in consequence of any person in whom an estate at law was outstanding having omitted to make the tenant to the writ of entry or other writ for suffering such recovery, provided the person who was the owner of or had power to dispose of an estate in pos-



things), that the said [*intended wife*] should convey the said lands and hereditaments hereinbefore described and hereby

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session, not being less than an estate for a life or lives in the whole of the rents and profits of the lands in which such estate at law was outstanding, or the ultimate surplus of such rents and profits after payment of any charges thereout, and whether any surplus after payment of such charges shall actually remain or not, shall, within the time limited for making the tenant to the writ for suffering such recovery, have conveyed or disposed of such estate in possession to the tenant to such writ; and an estate shall be deemed to be an estate in possession, notwithstanding there shall be subsisting prior thereto any lease for lives or years, absolute or determinable, upon which a rent is reserved, or any term of years upon which no rent is reserved.

Stat. 3 & 4  
Will. 4, c. 74.

Sect. 12. "Provided always, That where any fine or common recovery shall before the passing of this act have been wholly reversed, such fine or recovery shall not be rendered valid by this act; and where any fine or common recovery shall before the passing of this act have been reversed as to some only of the parties thereto, or as to some only of the lands therein comprised, such fine or recovery shall not be rendered valid by this act so far as the same shall have been reversed; and where any person who would have been barred by any fine or common recovery, if valid, shall before the passing of this act have had any dealings with the lands comprised in such fine or recovery on the faith of the same being invalid, such fine or recovery shall not be rendered valid by this act; and this act shall not render valid any fine or common recovery as to lands of which any person shall at the time of the passing of this act be in possession in respect of any estate which the fine or common recovery, if valid, would have barred, nor any fine or common recovery which, before the passing of this act, any court of competent jurisdiction shall have refused to amend; nor shall this act prejudice or affect any proceedings at law or in equity, pending at the time of the passing of this act, in which the validity of such fine or recovery shall be in question between the party claiming under such fine or recovery and the party claiming adversely thereto; and such fine or recovery, if the result of such proceedings shall be to invalidate the same, shall not be rendered valid by this act; and if such proceedings shall abate or become defective in consequence of the death of the party claiming under or adversely to such fine or recovery, any person who but for this act would have a right of action or suit by reason of the invalidity of such fine or recovery shall retain such right, so that he commence proceedings within six calendar months after the death of such party.

Certain cases in which fines and recoveries shall not be made valid by this act.

Sect. 13. "That after the 31st day of December, 1833, the records of all fines and common recoveries levied and suffered in his Majesty's

As to the records of fines

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and recoveries  
in the Courts of  
Common Pleas  
at Westminster  
and Lancaster,  
and the Court of  
Pleas at Dur-  
ham, after the  
31st of Dec.  
1833.

bargained and sold, or intended so to be, unto and to the use of the said [*trustees*], their heirs and assigns, upon and

Court of Common Pleas at Westminster, and all the proceedings thereof, shall be deposited in such places and kept by such persons as the said Court of Common Pleas shall from time to time order or direct; and the records of all fines and common recoveries levied and suffered in his Majesty's Court of Common Pleas at Lancaster, and all the proceedings thereof, shall be deposited in such places and kept by such persons as his Majesty's justices of assize for the county palatine of Lancaster for the time being shall from time to time order or direct; and the records of all fines and common recoveries levied and suffered in the Court of Pleas of the county palatine of Durham, and all the proceedings thereof, shall be deposited in such places and kept by such persons as the said Court of Pleas shall from time to time order or direct; and in the meantime the said records and proceedings shall remain in the same places respectively where they are now deposited, and be kept by the respective persons who would have continued entitled to the custody thereof if this act had not been passed; and while the said records and proceedings respectively shall be kept by such persons respectively, searches may be made and extracts and copies obtained as heretofore, and on paying the accustomed fees; and when any of the records and proceedings shall, by the order of the court or justices having the control over the same, be kept by any other person, then, so far as relates to the records and proceedings in the custody of such other person, searches may be made and extracts or copies obtained at such times and on paying such fees as shall from time to time be ordered by the court or justices having the control over the same; and the extracts or copies so obtained shall be as available in evidence as they would have been if obtained from the person whose duty it would have been to have made and delivered out the same if this act had not been passed.

Estates tail, and  
estates expect-  
ant thereon, no  
longer barrable  
by warranty.

Sect. 14. "That all warranties of lands which, after the 31st day of December, 1833, shall be made or entered into by any tenant in tail thereof shall be absolutely void against the issue in tail and all persons whose estates are to take effect after the determination or in defeazance of the estate tail.

#### ASSURANCES BY TENANTS IN TAIL.

Power, after the  
31st of Dec.  
1833, to dispose  
of lands entailed  
in fee simple or  
for a less estate,  
saving the rights  
of certain per-  
sons.

Sect. 15. "That after the 31st day of December, 1833, every actual tenant in tail, whether in possession, remainder, contingency, or otherwise, shall have full power to dispose of for an estate in fee simple absolute, or for any less estate, the lands entailed, as against all persons claiming the lands entailed by force of any estate tail which shall be vested in or might be claimed by, or which but for some previous act would have been vested in or might have been claimed by, the person

for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declara-

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making the disposition, at the time of his making the same, and also as against all persons, including the King's most excellent Majesty, his heirs and successors, whose estates are to take effect after the determination or in defeazance of any such estate tail; saving always the rights of all persons in respect of estates prior to the estate tail in respect of which such disposition shall be made, and the rights of all other persons, except those against whom such disposition is by this act authorized to be made.

Stat. 3 & 4  
Will. 4, c. 74.

Sect. 16. "Provided always, That where, under any settlement made before the passing of this act, any woman shall be tenant in tail of lands within the provisions of an act passed in the eleventh year of the reign of his Majesty King Henry the Seventh, intituled 'Certain Alienations made by the Wife, of the Lands of her deceased Husband, shall be void;' the power of disposition hereinbefore contained as to such lands shall not be exercised by her except with such assent as, if this act had not been passed, would, under the provisions of the said act of King Henry the Seventh, have rendered valid a fine or common recovery levied or suffered by her of such lands.

Power of disposition not to be exercised by women tenants in tail *ex provisione viri*, under an existing settlement, except with assent.

Sect. 17. "Provided always, That, except as to lands comprised in any settlement made before the passing of this act, the said act of the eleventh year of the reign of his Majesty King Henry the Seventh shall be and the same is hereby repealed.

Except as to lands already in settlements the act 11 H. 7, c. 20, repealed.

Sect. 18. "Provided always, That the power of disposition hereinbefore contained shall not extend to tenants of estates tail, who, by an act passed in the thirty-fourth and thirty-fifth years of the reign of his Majesty King Henry the Eighth, intituled 'An Act to imbar feigned Recovery of Lands wherein the King is in Reversion,' or by any other act, are restrained from barring their estates tail, or to tenants in tail after possibility of issue extinct.

The power of disposition not to extend to certain tenants in tail.

Sect. 19. "That, after the 31st day of December, 1833, in every case in which an estate tail in any lands shall have been barred and converted into a base fee, either before or on or after that day, the person who, if such estate tail had not been barred, would have been actual tenant in tail of the same lands, shall have full power to dispose of such lands as against all persons, including the King's most excellent Majesty, his heirs and successors, whose estates are to take effect after the determination or in defeazance of the base fee into which the estate tail shall have been converted, so as to enlarge the base fee into a fee simple absolute; saving always the rights of all persons in respect of estates prior to the estate tail which shall have been converted into a base fee, and the rights of all other persons, except those against whom such disposition is by this act authorized to be made.

Power, after the 31st of Dec. 1833, to enlarge base fees; saving the rights of certain persons.

*Testatum.*

tions hereinafter expressed or referred to concerning the same. NOW THIS INDENTURE WITNESSETH,

Issue inheritable not to bar expectancies.

Sect. 20. "Provided always, That nothing in this act contained shall enable any person to dispose of any lands entailed in respect of any expectant interest which he may have as issue inheritable to any estate tail therein.

Extent of the estate created by a tenant in tail by way of mortgage, or for any other limited purpose.

Sect. 21. "Provided always, That if a tenant in tail of lands shall make a disposition of the same, under this act, by way of mortgage, or for any other limited purpose, then and in such case such disposition shall, to the extent of the estate thereby created, be an absolute bar in equity as well as at law to all persons as against whom such disposition is by this act authorized to be made, notwithstanding any intention to the contrary may be expressed or implied in the deed by which the disposition may be effected: Provided always, that if the estate created by such disposition shall be only an estate *pur autre vie*, or for years absolute or determinable, or if, by a disposition under this act by a tenant in tail of lands, an interest, charge, lien, or incumbrance shall be created without a term of years absolute or determinable, or any greater estate, for securing or raising the same, then such disposition shall in equity be a bar only so far as may be necessary to give full effect to the mortgage, or to such other limited purpose, or to such interest, lien, charge, or incumbrance, notwithstanding any intention to the contrary may be expressed or implied in the deed by which the disposition may be effected.

## PROTECTOR OF THE SETTLEMENT.

Owner of certain estate, prior to an estate tail, to be protector of the settlement.

Sect. 22. "That if at the time when there shall be a tenant in tail of lands under a settlement, there shall be subsisting in the same lands or any of them, under the same settlement, any estate for years determinable on the dropping of a life or lives, or any greater estate (not being an estate for years), prior to the estate tail, then the person who shall be the owner of the prior estate, or the first of such prior estates if more than one, then subsisting under the same settlement, or who would have been so if no absolute disposition thereof had been made, (the first of such prior estates, if more than one, being for all the purposes of this act deemed the prior estate,) shall be the protector of the settlement so far as regards the lands in which such prior estate shall be subsisting, and shall for all the purposes of this act be deemed the owner of such prior estate, although the same may have been charged or incumbered either by the owner thereof or by the settlor, or otherwise howsoever, and although the whole of the rents and profits be exhausted or required for the payment of the charges and incumbrances on such prior estate, and although such prior estate may have been absolutely disposed of by the owner thereof, or by or in consequence of the bankruptcy or insolvency



that, in pursuance of the said agreement, and in consideration of the said intended marriage, and in order to de-

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of such owner, or by any other act or default of such owner; and that an estate by the curtesy, in respect of the estate tail, or of any prior estate created by the same settlement, shall be deemed a prior estate under the same settlement within the meaning of this clause; and that an estate by way of resulting use or trust to or for the settlor shall be deemed an estate under the same settlement within the meaning of this clause.

Stat. 3 & 4,  
Will. 4, c. 4.

Sect. 23. "Provided always, That where two or more persons shall be owners, under a settlement within the meaning of this act, of a prior estate, the sole owner of which estate, if there had been only one, would in respect thereof have been the protector of such settlement, each of such persons, in respect of such undivided share as he could dispose of, shall for all the purposes of this act be deemed the owner of a prior estate, and shall, in exclusion of the other or others of them, be the sole protector of such settlement to the extent of such undivided share.

Owner of undi-  
vided share sole  
protector *pro*  
*tanto*.

Sect. 24. "Provided always, That where a married woman would, if single, be the protector of a settlement in respect of a prior estate, which is not thereby settled, or agreed or directed to be settled, to her separate use, she and her husband together shall in respect of such estate be the protector of such settlement, and shall be deemed one owner; but if such prior estate shall by such settlement have been settled, or agreed or directed to be settled, to her separate use, then and in such case she alone shall in respect of such estate be the protector of such settlement.

Where a mar-  
ried woman  
alone shall be  
the protector,  
and where she  
and her husband  
together shall  
be protector.

Sect. 25. "Provided always, That, except in the case of a lease hereinafter provided for, where an estate shall be limited by a settlement by way of confirmation, or where the settlement shall merely have the effect of restoring an estate, in either of those cases such estate shall for the purposes of this act, so far as regards the protector of the settlement, be deemed an estate subsisting under such settlement.

As to estates  
confirmed or re-  
stored by settle-  
ment.

Sect. 26. "Provided always, That where a lease at a rent shall be created or confirmed by a settlement, the person in whose favour such lease shall be created or confirmed shall not in respect thereof be the protector of such settlement.

As to leases at  
rent created by  
settlement.

Sect. 27. "Provided always, That no woman in respect of her dower, and (except in the case hereinafter provided for of a bare trustee under a settlement made on or before the 31st day of December, 1833,) no bare trustee, heir, executor, administrator, or assign, in respect of any estate taken by him as such bare trustee, heir, executor, administrator, or assign, shall be the protector of a settlement.

No tenant in  
dower, bare  
trustee, heir,  
executor, &c.  
to be protector,  
except in a cer-  
tain case.

Sect. 28. "Provided always, That where under any settlement there shall be more than one estate prior to an estate tail, and the person who shall be the owner within the meaning of this act of any such prior estate,

Who shall be  
the protector  
where the own-  
er of the prior

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feat and destroy all estates tail of the said [*intended wife*] in the said — and hereditaments hereby bargained and

estate shall, by the two last clauses, be excluded.

Where, in the disposition of an estate before the 31st Dec. 1833, the person to make the tenant to the writ of entry in a recovery shall be the protector.

Where, in the case of the disposition of a reversion on or before the 31st of Dec. 1833, the person to make the tenant to the writ of entry in a recovery shall be the protector.

Bare trustee under a settlement made before the passing of act to be protector.

Power to any settlor to appoint the protector.

in respect of which but for the two last preceding clauses, or either of them, he would have been the protector of the settlement, shall by virtue of such clauses, or either of them, be excluded from being the protector, then and in such case the person (if any) who if such estate did not exist would be the protector of the settlement shall be such protector.

Sect. 29. "Provided always, That where already, or on or before the 31st day of December, 1833, an estate under a settlement shall have been disposed of either absolutely or otherwise, and either for valuable consideration or not, the person who in respect of such estate would, if this act had not been passed, have been the proper person to have made the tenant to the writ of entry or other writ for suffering a common recovery of the lands entailed by such settlement, shall, during the continuance of the estate which conferred the right to make the tenant to such writ of entry or other writ, be the protector of such settlement.

Sect. 30. "Provided always, That where any person having either already, or on or before the 31st day of December, 1833, either for valuable consideration or not, disposed of, either absolutely or otherwise, a remainder or reversion in fee in any lands, or created any estate out of such remainder or reversion, would under this act, if this clause had not been inserted, have been the protector of the settlement by which the lands were entailed in which such remainder or reversion may be subsisting, and thereby be enabled to concur in the barring of such remainder or reversion, which he could not have done if he had not become such protector, then and in every such case the person who, if this act had not been passed, would have been the proper person to have made the tenant to the writ of entry or other writ for suffering a common recovery of such lands, shall, during the continuance of the estate which conferred the right to make the tenant to such writ of entry or other writ, be the protector of such settlement.

Sect. 31. "Provided always, That where, under any settlement of lands made before the passing of this act, the person who, if this act had not been passed, would have been the proper person to make the tenant to the writ of entry or other writ for suffering a common recovery of such lands for the purpose of barring any estate tail or other estate under such settlement, shall be a bare trustee, such trustee shall, during the continuance of the estate, conferring on him the right to make the tenant to such writ of entry or other writ, be the protector of such settlement.

Sect. 32. "Provided always, That it shall be lawful for any settlor entailing lands to appoint, by the settlement by which the lands shall be entailed, any number of persons *in esse*, not exceeding three, and not being aliens, to be protector of the settlement in lieu of the person who

sold, and intended so to be, and all estates, rights, titles, interests, and powers, to take effect after the determination or

In consideration of the marriage, and for nominal pecuniary con-

Stat. 3 & 4  
Will. 4, c. 74.

would have been the protector if this clause had not been inserted, and either for the whole or any part of the period for which such person might have continued protector, and by means of a power to be inserted in such settlement to perpetuate during the whole or any part of such period the protectorship of the settlement in any one person or number of persons *in esse*, and not being an alien or aliens, whom the donee of the power shall think proper by deed to appoint protector of the settlement in the place of any one person or number of persons who shall die, or shall by deed relinquish his or their office of protector; and the person or persons so appointed shall, in case of there being no other person then protector of the settlement, be the protector, and shall, in case of there being any other person then protector of the settlement, be protector jointly with such other person: Provided, nevertheless, that by virtue or means of any such appointment the number of the persons to compose the protector shall never exceed three: Provided further, nevertheless, that every deed by which a protector shall be appointed under a power in a settlement, and every deed by which a protector shall relinquish his office, shall be void unless inrolled in his Majesty's High Court of Chancery within six calendar months after the execution thereof: Provided further, nevertheless, that the person who but for this clause would have been sole protector of the settlement, may be one of the persons to be appointed protector under this clause, if the settlor shall think fit, and shall, unless otherwise directed by the settlor, act as sole protector if the other persons constituting the protector shall have ceased to be so by death or relinquishment of the office by deed, and no other person shall have been appointed in their place.

Sect. 33. "Provided always, That if any person, protector of a settlement, shall be lunatic, idiot, or of unsound mind, and whether he shall have been found such by inquisition or not, then the Lord High Chancellor of Great Britain, or the Lord Keeper or the Lords Commissioners for the custody of the Great Seal of Great Britain for the time being, or other the person or persons for the time being intrusted by the King's sign manual with the care and commitment of the custody of the persons and estates of persons found lunatic, idiot, and of unsound mind, shall be the protector of such settlement in lieu of the person who shall be such lunatic or idiot or of unsound mind as aforesaid; or if any person, protector of a settlement, shall be convicted of treason or felony, or if any person, not being the owner of a prior estate under a settlement, shall be protector of such settlement, and shall be an infant, or if it shall be uncertain whether such last-mentioned person be living or dead, then his Majesty's High Court of Chancery shall be the protec-

In cases of lunacy, the Lord Chancellor or Lord Keeper or Lords Commissioners, or other persons intrusted with lunatics, or in cases of treason or felony, &c., the Court of Chancery to be the protector.

sideration, intended wife bargains and sells.

Stat. 3 & 4  
Will. 4, c. 74.

Where there is a protector, his consent requisite to enable an actual tenant in tail to create a larger estate than a base fee.

Where a base fee and a protector, his consent requisite to the exercising of a power of disposition.

The protector to be subject to no control in the exercise of his power of consenting.

in defeazance of the same estates tail, and in consideration of the sum of 10s. of lawful money of Great Britain and Ire-

tor of such settlement in lieu of the person who shall be an infant, or whose existence cannot be ascertained as aforesaid; or if any settlor entailing lands shall in the settlement by which the lands shall be entailed declare that the person who as owner of a prior estate under such settlement would be entitled to be protector of the settlement shall not be such protector, and shall not appoint any person to be protector in his stead, then the said Court of Chancery shall, as to the lands in which such prior estate shall be subsisting, be the protector of the settlement during the continuance of such estate; or if in any other case where there shall be subsisting under a settlement an estate prior to an estate tail under the same settlement, and such prior estate shall be sufficient to qualify the owner thereof to be protector of the settlement, and there shall happen at any time to be no protector of the settlement as to the lands in which the prior estate shall be subsisting, the said Court of Chancery shall, while there shall be no such protector, and the prior estate shall be subsisting, be the protector of the settlement as to such lands.

Sect. 34. " Provided always, that if at the time when any person, actual tenant in tail of lands under a settlement, but not entitled to the remainder or reversion in fee immediately expectant on the determination of his estate tail, shall be desirous of making under this act a disposition of the lands entailed, there shall be a protector of such settlement, then and in every such case the consent of such protector shall be requisite to enable such actual tenant in tail to dispose of the lands entailed to the full extent to which he is hereinbefore authorized to dispose of the same; but such actual tenant in tail may, without such consent, make a disposition under this act of the lands entailed, which shall be good against all persons who, by force of any estate tail which shall be vested in or might be claimed by, or which but for some previous act or default would have been vested in or might have been claimed by, the person making the disposition at the time of his making the same, shall claim the lands entailed.

Sect. 35. " Provided always, that where an estate tail shall have been converted into a base fee, in such case, so long as there shall be a protector of the settlement by which the estate tail was created, the consent of such protector shall be requisite to enable the person who would have been tenant of the estate tail if the same had not been barred to exercise, as to the lands in respect of which there shall be such protector, the power of disposition hereinbefore contained.

Sect. 36. " That any device, shift, or contrivance by which it shall be attempted to control the protector of a settlement in giving his consent, or to prevent him in any way from using his absolute discretion in regard to his consent, and also any agreement entered into by the protector of



land, paid by the said [*trustees*] to the said [*intended wife*], at or before the execution of these presents, (the receipt

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a settlement to withhold his consent, shall be void; and that the protector of a settlement shall not be deemed to be a trustee in respect of his power of consent; and a court of equity shall not control or interfere to restrain the exercise of his power of consent, nor treat his giving consent as a breach of trust.

Stat. 3 & 4  
Will. 4, c. 74.

Sect. 37. " Provided always, that the rules of equity in relation to dealings and transactions between the donee of a power and any object of the power in whose favour the same may be exercised, shall not be held to apply to dealings and transactions between the protector of a settlement and a tenant in tail under the same settlement, upon the occasion of the protector giving his consent to a disposition by a tenant in tail under this act.

Certain rules of equity not to apply between the protector and a tenant in tail under the same.

Sect. 38. " Provided always, that when a tenant in tail of lands under a settlement shall have already created or shall hereafter create in such lands, or any of them, a voidable estate in favour of a purchaser for valuable consideration, and shall afterwards under this act, by any assurance other than a lease not requiring enrolment, make a disposition of the lands in which such voidable estate shall be created, or any of them, such disposition, whatever its object may be, and whatever may be the extent of the estate intended to be thereby created, shall, if made by the tenant in tail with the consent of the protector (if any) of the settlement, or by the tenant in tail alone if there shall be no such protector, have the effect of confirming such voidable estate in the lands thereby disposed of to its full extent as against all persons except those whose rights are saved by this act; but if at the time of making the disposition there shall be a protector of the settlement, and such protector shall not consent to the disposition, and the tenant in tail shall not without such consent be capable under this act of confirming the voidable estate to its full extent, then and in such case such disposition shall have the effect of confirming such voidable estate so far as such tenant in tail would then be capable under this act of confirming the same without such consent: Provided always, that if such disposition shall be made to a purchaser for valuable consideration, who shall not have express notice of the voidable estate, then and in such case the voidable estate shall not be confirmed as against such purchaser and the persons claiming under him.

A voidable estate by a tenant in tail, in favour of a purchaser, confirmed by a subsequent disposition of such tenant in tail under this act, but not against a purchaser without express notice.

Sect. 39. " That if a base fee in any lands, and the remainder or reversion in fee in the same lands, shall at the time of the passing of this act, or at any time afterwards, be united in the same person, and at any time after the passing of this act there shall be no intermediate estate between the base fee and the remainder or reversion, then and in such

Base fees, when united with the immediate reversions, enlarged instead of being merged.

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&c.), she the said [*intended wife*], with the privity and approbation of the said [*intended husband*], testified by his

Stat. 3 & 4  
Will. 4, c. 74.

case the base fee shall not merge, but shall be *ipso facto* enlarged into as large an estate as the tenant in tail, with the consent of the protector, if any, might have created by any disposition under this act if such remainder or reversion had been vested in any other person.

FORM AND SOLEMNITIES OF ASSURANCES BY TENANTS IN TAIL, AND DEEDS  
OF CONSENT BY PROTECTORS.

Tenant in tail to make a disposition by deed as if seised in fee, but not by will or contract; and if a married woman, with her husband's concurrence.

Sect. 40. " That every disposition of lands under this act by a tenant in tail thereof shall be effected by some one of the assurances (not being a will) by which such tenant in tail could have made the disposition if his estate were an estate at law in fee simple absolute: Provided, nevertheless, that no disposition by a tenant in tail shall be of any force either at law or in equity, under this act, unless made or evidenced by deed; and that no disposition by a tenant in tail resting only in contract, either express or implied, or otherwise, and whether supported by a valuable or meritorious consideration or not, shall be of any force at law or in equity under this act, notwithstanding such disposition shall be made or evidenced by deed; and if the tenant in tail making the disposition shall be a married woman, the concurrence of her husband shall be necessary to give effect to the same; and any deed which may be executed by her for effecting the disposition shall be acknowledged by her as hereinafter directed.

Every assurance by a tenant in tail, except a lease not exceeding twenty-one years at a rack rent, or not less than five-sixths of a rack rent, to be inoperative unless inrolled in Chancery within six calendar months.

27 Hen. 8, c. 16.

Sect. 41. " Provided always, that no assurance by which any disposition of lands shall be effected under this act by a tenant in tail thereof (except a lease for any term not exceeding twenty-one years, to commence from the date of such lease, or from any time not exceeding twelve calendar months from the date of such lease, where a rent shall be thereby reserved, which, at the time of granting such lease, shall be a rack rent, or not less than five-sixth parts of a rack rent), shall have any operation under this act unless it be inrolled in his Majesty's High Court of Chancery within six calendar months after the execution thereof; and if the assurance by which any disposition of lands shall be effected under this act shall be a bargain and sale, such assurance, although not inrolled within the time prescribed by the act passed in the twenty-seventh year of the reign of his Majesty King Henry the Eighth, intituled ' For inrolment of bargains and sales,' shall, if inrolled in the said Court of Chancery within the time prescribed by this clause, be as good and valid as the same would have been if the same had been inrolled in the said Court within the time prescribed by the said act of Henry the Eighth.

Consent of the protector to be given by the

Sect. 42. " That the consent of the protector of a settlement to the disposition under this act of a tenant in tail shall be given either by the

execution hereof, *Doth*, by these presents, grant, bargain, sell, and confirm unto the said [*trustees*] and their heirs,

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same assurance by which the disposition shall be effected, or by a deed distinct from the assurance, and to be executed either on or at any time before the day on which the assurance shall be made, otherwise the consent shall be void.

same assurance  
or by a distinct  
deed.

Sect. 43. "That if the protector of a settlement shall, by a distinct deed, give his consent to the disposition of a tenant in tail, it shall be considered that such protector has given an absolute and unqualified consent, unless in such deed he shall refer to the particular assurance by which the disposition shall be effected, and shall confine his consent to the disposition thereby made.

If by distinct  
deed, to be con-  
sidered unquali-  
fied, unless he  
refer to the as-  
surance.

Sect. 44. "That it shall not be lawful for the protector of a settlement who, under this act, shall have given his consent to the disposition of a tenant in tail, to revoke such consent.

Protector not to  
revoke his con-  
sent.

Sect. 45. "That any married woman, being either alone or jointly with her husband protector of a settlement, may under this act, in the same manner as if she were a feme sole, give her consent to the disposition of a tenant in tail.

A married wo-  
man protector  
to consent as a  
feme sole.

Sect. 46. "Provided always, that the consent of a protector to the disposition of a tenant in tail shall, if given by a deed distinct from the assurance by which the disposition shall be effected by the tenant in tail, be void, unless such deed be inrolled in his Majesty's High Court of Chancery either at or before the time when the assurance shall be inrolled.

Consent of a  
protector by dis-  
tinct deed void,  
unless inrolled  
with or before  
the assurance.

Sect. 47. "That in cases of dispositions of lands under this act by tenants in tail thereof, and also in cases of consents by protectors of settlements to dispositions of lands under this act by tenants in tail thereof, the jurisdiction of courts of equity shall be altogether excluded, either on the behalf of a person claiming for a valuable or meritorious consideration, or not, in regard to the specific performance of contracts, and the supplying of defects in the execution either of the powers of disposition given by this act to tenants in tail, or of the powers of consent given by this act to protectors of settlements, and the supplying under any circumstances of the want of execution of such powers of disposition and consent respectively, and in regard to giving effect in any other manner to any act or deed by a tenant in tail or protector of a settlement which in a court of law would not be an effectual disposition or consent under this act; and that no disposition of lands under this act by a tenant in tail thereof in equity, and no consent by a protector of a settlement to a disposition of lands under this act by a tenant in tail thereof in equity, shall be of any force unless such disposition or consent would in case of an estate tail at law be an effectual disposition or consent under this act in a court of law,

Courts of equity  
excluded from  
giving any effect  
to dispositions  
by tenants in  
tail, or consents  
of protectors of  
settlements,  
which in courts  
of law would  
be effectual.

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ALL THAT (*describe parcels*), with their and every of their appurtenances, And all the estate, right, title, interest, pro-

Lord Chancellor, &c. to have power to consent to a disposition by a tenant in tail, and to make such orders as shall be thought necessary; and if any other person shall be joint protector the disposition not to be valid without his consent.

Sect. 48. " Provided always, that in every case in which the Lord High Chancellor, Lord Keeper, or Lords Commissioners for the custody of the Great Seal, or other the person or persons intrusted with the care and commitment of the custody of the persons and estates of persons found lunatic, idiot, and of unsound mind, or his Majesty's High Court of Chancery, shall be the protector of a settlement, such Lord High Chancellor, Lord Keeper, or Lords Commissioners, or person or persons so intrusted as aforesaid, or the said Court of Chancery (as the case may be), while protector of such settlement, shall, on the motion or petition in a summary way by a tenant in tail under such settlement, have full power to consent to a disposition under this act by such tenant in tail, and the disposition to be made by such tenant in tail upon such motion or petition as aforesaid shall be such as shall be approved of by such Lord High Chancellor, Lord Keeper, or Lords Commissioners, or person or persons so intrusted as aforesaid, or the said Court of Chancery (as the case may be); and it shall be lawful for such Lord High Chancellor, Lord Keeper, or Lords Commissioners, or person or persons so intrusted as aforesaid, or the said Court of Chancery (as the case may be), to make such orders in the matter as shall be thought necessary; and if such Lord High Chancellor, Lord Keeper, or Lords Commissioners, or person or persons so intrusted as aforesaid, or the said Court of Chancery (as the case may be), shall, in lieu of any such person as aforesaid, be the protector of a settlement, and there shall be any other person protector of the same settlement, jointly with such person as aforesaid, then and in every such case the disposition by the tenant in tail, though approved of as aforesaid, shall not be valid, unless such other person being protector as aforesaid shall consent thereto in the manner in which the consent of the protector is by this act required to be given.

Order of the Lord Chancellor, &c. to be evidence of consent.

Sect. 49. " Provided always, that in every case in which the Lord High Chancellor, Lord Keeper, or Lords Commissioners for the custody of the Great Seal, or other the person or persons intrusted with the care and commitment of the custody of the persons and estates of persons found lunatic, idiot, and of unsound mind, or his Majesty's High Court of Chancery, shall be the protector of a settlement, no document or instrument, as evidence of the consent of such protector to the disposition of a tenant in tail under such settlement, shall be requisite beyond the order in obedience to which the disposition shall have been made.

#### ESTATES TAIL IN COPYHOLDS.

The previous clauses to apply to copyholds, with certain variations.

Sect. 50. " That all the previous clauses in this act, so far as circumstances and the different tenures will admit, shall apply to lands held by copy of court roll, except that a disposition of any such lands under this



perty, possession, benefit, claim, and demand whatsoever, both at law and in equity, of her the said [*intended wife*] And all the estate, &c.

act by a tenant in tail thereof, whose estate shall be an estate at law, shall be made by surrender, and except that a disposition of any such lands under this act by a tenant in tail thereof, whose estate shall be merely an estate in equity, may be made either by surrender or by a deed as hereinafter provided, and except so far as such clauses are otherwise altered or varied by the clauses hereinafter contained.

Stat. 3 & 4  
Will. 4, c. 74.

Sect. 51. " Provided always, that if the consent of the protector of a settlement to the disposition of lands held by copy of court roll by a tenant in tail thereof shall be given by deed, such deed shall, either at or before the time when the surrender shall be made by which the disposition shall be effected, be executed by such protector, and produced to the lord of the manor of which the lands are parcel, or to his steward, or to the deputy of such steward; and the consent of such protector shall be void unless such deed shall be so executed and produced; and on the production of the deed the lord, or steward or deputy steward, shall by writing under his hand, to be indorsed on the deed, acknowledge that the same was produced within the time limited, and shall cause such deed, with the indorsement thereon, to be entered on the court rolls of the manor; and the indorsement, purporting to be so signed, shall of itself be *prima facie* evidence that the deed was produced within the time limited, and that the person who signed the indorsement was the lord of the manor, or his steward, or the deputy of such steward; and after such deed shall have been so entered the lord of the manor, or his steward, or the deputy of such steward, shall indorse thereon a memorandum signed by him, testifying the entry of the same on the court rolls.

As to the deed of consent and the entry of it on the court rolls where the protector of a settlement of copyholds consents by deed to the disposition of a tenant in tail.

Sect. 52. " Provided always, that if the consent of the protector of a settlement to the disposition of lands held by copy of court roll by a tenant in tail thereof shall not be given by deed, then and in such case the consent shall be given by the protector to the person taking the surrender by which the disposition shall be effected; and if the surrender shall be made out of court, it shall be expressly stated in the memorandum of such surrender that such consent had been given, and such memorandum shall be signed by the protector; and the lord of the manor of which the lands are parcel, or his steward, or the deputy of such steward, shall cause the memorandum, with such statement therein as to the consent, to be entered on the court rolls of the manor; and such memorandum shall be good evidence of the consent and of the surrender therein stated to be made; and the entry of the memorandum on the court rolls, or a copy of such entry, shall be as available for the purposes of evidence as any other entry on the court rolls, or a copy thereof; but if the surrender shall be made in court, the lord of the manor, or his steward, or the

As to the consent of the protector of a settlement of copyholds when not given by deed, and the preserving of evidence of the same on the court rolls.

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in, to, and upon the same, together with all deeds, evidences, and writings whatsoever relating to or concerning the said

Stat. 3 & 4  
Will. 4, c. 74.

deputy of such steward, shall cause an entry of such surrender, containing a statement that such consent had been given, to be made on the court rolls; and the entry of such surrender on the court rolls, or a copy of such entry, shall be as available for the purposes of evidence as any other entry on the court rolls, or a copy thereof.

Power to equitable tenants in tail of copyholds to dispose of their lands by deed.

Sect. 53. " Provided always, that a tenant in tail of lands held by copy of court roll, whose estate shall be merely an estate in equity, shall have full power by deed to dispose of such lands under this act in the same manner in every respect as he could have done if they had been of freehold tenure; and all the previous clauses in this act shall, so far as circumstances will admit, apply to the lands in respect of which any such equitable tenant in tail shall avail himself of this present clause; and the deed by which the disposition shall be effected shall be entered on the court rolls of the manor of which the lands thereby disposed of may be parcel; and if there shall be a protector to consent to the disposition, and such protector shall give his consent by a distinct deed, the consent shall be void unless the deed of consent be executed by the protector either on or at any time before the day on which the deed of disposition shall be executed by the equitable tenant in tail; and such deed of consent shall be entered on the court rolls; and it shall be imperative on the lord of the manor, or his steward, or the deputy of such steward, when required so to do, to enter such deed or deeds on the court rolls, and he shall indorse on each deed so entered a memorandum, signed by him, testifying the entry of the same on the court rolls: Provided always, that every deed by which lands held by copy of court roll shall be disposed of under this clause by an equitable tenant in tail thereof, shall be void against any person claiming such lands, or any of them, for valuable consideration under any subsequent assurance duly entered on the court rolls of the manor\* of which the lands may be parcel, unless the deed of disposition by the equitable tenant in tail be entered on the court rolls of such manor before the subsequent assurance shall have been entered.

\* *Sic.*

Inrolment not necessary as to copyholds.

Sect. 54. " Provided always, that in no case where any disposition under this act of lands held by copy of court roll by a tenant in tail thereof shall be effected by surrender or by deed, shall the surrender or the memorandum, or a copy thereof, or the deed of disposition, or the deed, if any, by which the protector shall consent to the disposition, require inrolment otherwise than by entry on the court rolls.

#### BANKRUPT TENANTS IN TAIL.

Repeal of the Bankrupt Act, 6 Geo. 4, c. 16,

Sect. 55. " That, after the 31st day of December, 1833, so much of an act passed in the sixth year of the reign of his late Majesty King George

premises, or any part thereof, now in the custody, possession, or power of the said [*intended wife*], or which she can or

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the Fourth, intituled 'An Act to amend the laws relating to bankrupts,' as empowers the commissioners named in any commission of bankrupt issued against a tenant in tail to make sale of any lands, tenements, and hereditaments, situate either in England or Ireland, whereof such bankrupt shall be seised of any estate tail in possession, reversion, or remainder, and whereof no reversion or remainder is in the crown, the gift or provision of the crown, shall be and the same is hereby repealed: Provided always, that such repeal shall not extend to the lands, whatever the tenure may be, of any person adjudged a bankrupt under any commission of bankrupt, or under any fiat which, in pursuance of the said act of the sixth year of the reign of King George the Fourth, or of any former act concerning bankrupts, or of an act passed in the first and second years of the reign of his Majesty King William the Fourth, intituled 'An Act to establish a Court of Bankruptcy,' hath been or shall be issued on or before the 31st day of December, 1833; Provided also, that such repeal shall not have the effect of reviving in any respect the acts repealed by the said act of the sixth year of the reign of King George the Fourth, or any of them.

s. 65, so far as relates to estates tail, but not to extend to lands of a bankrupt under a commission or fiat issued on or before the 31st of Dec. 1833, nor to revive former acts.

Sect. 56. "That any commissioner acting in the execution of any fiat which, after the 31st day of December, 1833, shall be issued in pursuance of the said act passed in the first and second years of the reign of King William the Fourth, under which any person shall be adjudged a bankrupt, who at the time of issuing such fiat, or at any time afterwards, before he shall have obtained his certificate, shall be an actual tenant in tail of lands of any tenure, shall by deed dispose of such lands to a purchaser for valuable consideration, for the benefit of the creditors of such actual tenant in tail, and shall create by any such disposition as large an estate in the lands disposed of as the actual tenant in tail, if he had not become bankrupt, could have done under this act at the time of such disposition: Provided always, that if at the time of the disposition of such lands, or any of them, by such commissioner as aforesaid, there shall be a protector of the settlement by which the estate of such actual tenant in tail in the lands disposed of by such commissioner was created, and the consent of such protector would have been requisite to have enabled the actual tenant in tail, if he had not become bankrupt, to have disposed of such lands to the full extent to which, if there had been no such protector, he could under this act have disposed of the same, and such protector shall not consent to the disposition, then and in such case the estate created in such lands, or any of them, by the disposition of such commissioner, shall be as large an estate as the actual tenant in tail, if he had

The commissioner, in the case of an actual tenant in tail becoming bankrupt after the 31st of Dec. 1833, by deed to dispose of the lands of the bankrupt to a purchaser.

Proviso as to consent of protector, if any.

*Habendum.*

may procure without suit, and the full benefit and advantage thereof respectively; **TO HAVE AND TO HOLD** the said —

Stat. 3 & 4  
Will. 4, c. 74.

Commissioner, in case of a tenant in tail entitled to a base fee becoming bankrupt, and of there being no protector, by deed to dispose of the lands of the bankrupt to a purchaser.

As to the consent of the protector in case of bankruptcy.

not become bankrupt, could at the time of such disposition have created under this act in such lands without the consent of the protector.

Sect. 57. " That any commissioner acting in the execution of any such fiat as aforesaid under which any person shall be adjudged a bankrupt, who at the time of issuing such fiat, or at any time afterwards before he shall have obtained his certificate, shall be a tenant in tail entitled to a base fee in lands of any tenure, shall by deed dispose of such lands to a purchaser for valuable consideration, for the benefit of the creditors of the person so entitled as aforesaid, provided at the time of the disposition there be no protector of the settlement by which the estate tail converted into the base fee was created; and by such disposition the base fee shall be enlarged into as large an estate as the same could at the time of such disposition have been enlarged into under this act by the person so entitled if he had not become bankrupt.

Sect. 58. " That the commissioner acting in the execution of any such fiat as aforesaid, under which a person being, or before obtaining his certificate becoming, an actual tenant in tail of lands of any tenure, or a tenant in tail entitled to a base fee in lands of any tenure, shall be adjudged a bankrupt, shall, if there shall be a protector of the settlement by which the estate tail of such actual tenant in tail, or the estate tail converted into a base fee (as the case may be), was created, stand in the place of such actual tenant in tail, or tenant in tail so entitled as aforesaid, so far as regards the consent of such protector; and the disposition of such lands, or any of them, by such commissioner as aforesaid, if made with the consent of such protector, shall, whether such commissioner may have made under this act a prior disposition of the same lands without the consent of such protector or not, or whether a prior sale or conveyance of the same lands shall have been made or not under the said acts of the sixth year of King George the Fourth and the first and second years of King William the Fourth, or either of them, or any acts hereafter to be passed concerning bankrupts, have the same effect as such disposition would have had if such actual tenant in tail, or tenant in tail so entitled as aforesaid, had not become bankrupt, and such disposition had been made by him under this act, with the consent of such protector; and all the previous clauses in this act, in regard to the consent of the protector to the disposition of a tenant in tail of lands not held by copy of court roll, and in regard to the time and manner of giving such consent, and in regard to the enrolment of the deed of consent, where such deed shall be distinct from the assurance by which the disposition of the commissioner shall be effected, shall, except so far as the same



and all and singular other the premises hereinbefore bargained and sold, or expressed and intended so to be, unto and

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may be varied by the clause next hereinafter contained, apply to every consent that may be given by virtue of this present clause.

Stat. 3 & 4  
Will. 4, c. 74.

Sect. 59. "That every deed by which any commissioner acting in the execution of any such fiat as aforesaid shall, under this act, dispose of lands not held by copy of court roll, shall be void unless inrolled in his Majesty's High Court of Chancery within six calendar months after the execution thereof; and every deed by which any commissioner acting in the execution of any such fiat as aforesaid shall, under this act, dispose of lands held by copy of court roll, shall be entered on the court rolls of the manor of which the lands may be parcel; and if there shall be a protector who shall consent to the disposition of such lands held by copy of court roll, and he shall give his consent by a distinct deed, the consent shall be void unless the deed of consent be executed by the protector either on or at any time before the day on which the deed of disposition shall be executed by the commissioner; and such deed of consent shall be entered on the court rolls; and it shall be imperative on the lord of every manor of which any lands disposed of under this act by any such commissioner as aforesaid may be parcel, or the steward of such lord, or the deputy of such steward, to enter on the court rolls of the manor every deed required by this present clause to be entered on the court rolls, and he shall indorse on every deed so entered a memorandum, signed by him, testifying the entry of the same on the court rolls.

As to the inrolment in Chancery of the deed of disposition of freehold lands, and the entry on the court rolls of the deed of disposition of copyhold lands;

and of the deed of consent.

Sect. 60. "That if any commissioner acting in the execution of any such fiat as aforesaid shall, under this act, dispose of any lands of any tenure of which the bankrupt shall be actual tenant in tail, and in consequence of there being a protector of the settlement by which the estate of such actual tenant in tail was created, and of his not giving his consent, only a base fee shall by such disposition be created in such lands; and if at any time afterwards during the continuance of the base fee there shall cease to be a protector of such settlement, then and in such case, and immediately thereupon, such base fee shall be enlarged into the same estate into which the same could have been enlarged under this act if at the time of the disposition by such commissioner as aforesaid there had been no such protector.

Subsequent enlargement of base fees created by the disposition of the commissioner.

Sect. 61. "That if a tenant in tail entitled to a base fee in lands of any tenure shall be adjudged a bankrupt at the time when there shall be a protector of the settlement by which the estate tail converted into the base fee was created, and if such lands shall be sold or conveyed under the said acts of the sixth year of King George the Fourth and the first and second years of King William the Fourth, or either of them, or any other acts hereafter to be passed concerning bankrupts, and if at any

Enlargement of base fees subsequent to the sale or conveyance of the same under the bankrupt acts.

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to the use of the said [*trustees*], their heirs and assigns, for ever, (free and absolutely discharged of and from all estates

Stat. 3 & 4  
Will. 4, c. 74.

A voidable estate created in favour of a purchaser by an actual tenant in tail becoming bankrupt, or by a tenant in tail entitled to a base fee becoming bankrupt, confirmed by the disposition of the commissioner, if no protector, or being such with his consent, or on there ceasing to be a protector; but not against a purchaser, without express notice.

time afterwards during the continuance of the base fee in such lands there shall cease to be a protector of such settlement, then and in such case, and immediately thereupon, the base fee in such lands shall be enlarged into the same estate into which the same could have been enlarged under this act if at the time of the adjudication of such bankruptcy there had been no such protector, and the commissioner acting in the execution of the fiat under which the tenant in tail so entitled shall have been adjudged a bankrupt had disposed of such lands under this act.

Sect. 62. " Provided always, that where an actual tenant in tail of lands of any tenure, or a tenant in tail entitled to a base fee in lands of any tenure, shall have already created or shall hereafter create in such lands, or any of them, a voidable estate in favour of a purchaser for valuable consideration, and such actual tenant in tail, or tenant in tail so entitled as aforesaid, shall be adjudged a bankrupt under any such fiat as aforesaid, and the commissioner acting in the execution of such fiat shall make any disposition under this act of the lands in which such voidable estate shall be created, or any of them, then and in such case, if there shall be no protector of the settlement by which the estate tail of the actual tenant in tail, or the estate tail converted into a base fee, as the case may be, was created, or being such protector he shall consent to the disposition by such commissioner as aforesaid, whether such commissioner may have made under this act a previous disposition of such lands or not, or whether a prior sale or conveyance of the same lands shall have been made or not under the said acts of the sixth year of King George the Fourth and the first and second years of King William the Fourth, or either of them, or any other acts hereafter to be passed concerning bankrupts, the disposition by such commissioner shall have the effect of confirming such voidable estate in the lands thereby disposed of to its full extent as against all persons except those whose rights are saved by this act; and if at the time of the disposition by such commissioner, in the case of an actual tenant in tail, there shall be a protector, and such protector shall not consent to the disposition by such commissioner, and such actual tenant in tail, if he had not been adjudged a bankrupt, would not without such consent have been capable under this act of confirming the voidable estate to its full extent, then and in such case such disposition shall have the effect of confirming such voidable estate so far as such actual tenant in tail, if he had not been adjudged a bankrupt, could at the time of such disposition have been capable under this act of confirming the same without such consent; and if at any time after the disposition of such lands by such commissioner, and while only a base fee shall be subsisting in such lands, there shall cease to be a pro-

tail of the said [*intended wife*], and all estates, rights, titles, interests, and powers, to take effect after the determination

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tor of such settlement, and such protector shall not have consented to the disposition by such commissioner, then and in such case such voidable estate, so far as the same may not have been previously confirmed, shall be confirmed to its full extent as against all persons except those whose rights are saved by this act: Provided always, that if the disposition by any such commissioner as aforesaid shall be made to a purchaser for valuable consideration, who shall not have express notice of the voidable estate, then and in such case the voidable estate shall not be confirmed against such purchaser and the persons claiming under him.

Stat. 3 & 4  
Will. 4, c. 74.

Sect. 63. "That all acts and deeds done and executed by a tenant in tail of lands of any tenure, who shall be adjudged a bankrupt under any such fiat as aforesaid, and which shall affect such lands or any of them, and which, if he had been seised of or entitled to such lands in fee simple absolute, would have been void against the assignees of the bankrupt's estate, and all persons claiming under them, shall be void against any disposition which may be made of such lands under this act by such commissioner as aforesaid.

Acts of a bankrupt tenant in tail void against any disposition under this act by the commissioner.

Sect. 64. "Provided always, that, subject and without prejudice to the powers of disposition given by this act to the commissioner acting in the execution of any such fiat as aforesaid under which a person being, or before obtaining his certificate becoming, an actual tenant in tail of lands of any tenure, or a tenant in tail entitled to a base fee in lands of any tenure shall be adjudged a bankrupt, and also subject and without prejudice to the estate in such lands which may be vested in the assignees of the bankrupt's estate, and also subject and without prejudice to the rights of all persons claiming under the said assignees in respect of such lands or any of them, such actual tenant in tail, or tenant in tail so entitled as aforesaid, shall have the same powers of disposition under this act in regard to such lands as he would have had if he had not become bankrupt.

Subject to the powers given to the commissioner, and to the estate in the assignees, a bankrupt tenant in tail shall retain his powers of disposition.

Sect. 65. "That any disposition under this act of lands of any tenure by any commissioner acting in the execution of any such fiat as aforesaid under which a person being, or before obtaining his certificate becoming, an actual tenant in tail of such lands, or a tenant in tail entitled to a base fee in such lands shall be adjudged a bankrupt, shall, although the bankrupt be dead at the time of the disposition, be in the following cases as valid and effectual as the same would have been, and have the same operation under this act as the same would have had, if the bankrupt were alive; (that is to say), in case at the time of the bankrupt's decease there shall be no protector of the settlement by which the estate tail of the actual tenant in tail, or the estate tail converted into a base fee, as the case

The disposition by the commissioner of the lands of a bankrupt tenant in tail shall, if the bankrupt be dead, have in the cases here-in mentioned the same operation as if he were alive.

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or in defeazance of the same estates tail), nevertheless upon and for the trusts, intents, and purposes, and with, under,

Stat. 3 & 4  
Will. 4, c. 74.

may be, was created; or in case the bankrupt had been an actual tenant in tail of such lands, and there shall at the time of the disposition be any issue inheritable to the estate tail of the bankrupt in such lands, and either no protector of the settlement by which the estate tail was created, or a protector of such settlement who, in the manner required by this act, shall consent to the disposition, or a protector of such settlement who shall not consent to the disposition; or in case the bankrupt had been a tenant in tail entitled to a base fee in such lands, and there shall at the time of the disposition be any issue, who if the base fee had not been created would have been actual tenant in tail of such lands, and either no protector of the settlement by which the estate tail converted into a base fee was created, or a protector of such settlement who, in the manner required by this act, shall consent to the disposition.

Every disposition by the commissioner of copyhold lands where the estate shall not be equitable to have the same operation as a surrender; and the person to whom such land shall have been disposed of may claim to be admitted on paying the fines, &c.

Sect. 66. "That every disposition which under this act may be made by any commissioner acting in the execution of any such fiat as aforesaid of lands held by copy of court roll shall, in every case in which the estate of the bankrupt in such lands shall not be merely an estate in equity, operate in the same manner as if such lands had, for the same estate which shall have been acquired by the disposition by such commissioner as aforesaid, been duly surrendered into the hands of the lord of the manor of which they may be parcel, to the use of the person to whom the same shall have been disposed of by such commissioner; and the person to whom the lands shall have been so disposed of by such commissioner may claim to be admitted tenant of such lands, to hold the same by the ancient rents, customs, and services, in the same manner as if such lands had been duly surrendered to his use into the hands of the lord of the manor of which such lands may be parcel, and shall, upon being admitted tenant of such lands to hold the same as aforesaid, pay the fines, fees, and other dues which could have been lawfully demanded upon such admittance, if such lands had, for the same estate which shall have been acquired by the disposition by such commissioner as aforesaid, passed by surrender into the hands of the lord to the use of the person so admitted.

Assignees to recover rents of the lands of a bankrupt, of which the commissioner has power to make disposition, and to enforce covenants, as if entitled to the reversion. This

Sect. 67. "That the rents and profits of any lands of which any commissioner acting in the execution of any such fiat as aforesaid hath power to make disposition under this act shall in the meantime and until such disposition shall be made, or until it shall be ascertained that such disposition shall not be required for the benefit of the creditors of the person adjudged bankrupt under the fiat, be received by the assignees of the estate of the bankrupt, for the benefit of his creditors; and the assignees may proceed by action of debt for the recovery of such rents and



and subject to the powers, provisoes, agreements, and declarations hereinafter expressed, declared, and contained or

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profits, or may distrain for the same upon the lands subject to the payment thereof, and in case any action of trespass shall be brought for taking any such distress may plead thereto the general issue, and give this act or other special matter in evidence, and also, in case any such distress shall be replevied, shall have power to avow or make cognizance generally in such manner and form as any landlord may now do by virtue of the statute made in the eleventh year of the reign of his Majesty King George the Second, intituled 'An Act for the more effectual securing the payment of rents and preventing frauds by tenants,' or by any other law or statute now in force or hereafter to be made for the more effectually recovering of rent in arrear; and such assignees, and their bailiffs, agents, and servants, shall also have all such and the same remedies, powers, privileges, and advantages of pleading, avowing, and making cognizance, and be entitled to the same costs and damages, and the same remedies for the recovery thereof, as landlords, their bailiffs, agents, and servants, are now or hereafter may be by law entitled to have when rent is in arrear; and such assignees shall also have the same power and authority of enforcing the observance of all covenants, conditions, and agreements in respect of the lands of which such commissioner as aforesaid hath the power of disposition under this act, and in respect of the rents and profits thereof, and of entry into and upon the same lands for the nonobservance of any such covenant, condition, and agreement, and of expelling and amoving therefrom the tenants or other occupiers thereof, and thereby determining and putting an end to the estate of the persons who shall not have observed such covenants, conditions, and agreements, as the bankrupt would have had in case he had not been adjudged a bankrupt: Provided always, that this clause shall apply to all lands held by copy of court roll, but shall only apply to those lands of any other tenure which any commissioner acting in the execution of any such fiat as aforesaid may have power to dispose of under this act after the bankrupt's decease.

clause to apply to all copyhold lands; but, as to other lands, only to such as the commissioner may dispose of after the bankrupt's death.

11 Geo. 2, c. 19.

Sect 68. "That all the provisions in this act contained for the benefit of the creditors of persons who under such fiats as aforesaid shall be adjudged bankrupts after the 31st day of December, 1833, and for the confirmation in consequence of bankruptcy of voidable estates created by them, shall extend and apply to the lands of any tenure in Ireland of such persons as fully and effectually as if this act had throughout extended to lands of any tenure in Ireland; saving always the rights of the King's most excellent Majesty, his heirs and successors, to any reversion or remainder in the crown in lands in Ireland.

All the provisions of the act in regard to bankrupts shall apply to their lands in Ireland.

Sect. 69. "Provided always, that in all cases of bankruptcy, every Deeds relating

In trust for the wife until the marriage, and

referred to of and concerning the same, that is to say, *In trust* for the said [*intended wife*], her heirs and assigns, un-

to the lands of bankrupts in Ireland to be inrolled in the Court of Chancery there.

deed of disposition under this act of lands in Ireland by any commissioner acting in the execution of any such fiat as aforesaid, and also every deed by which the protector of a settlement of lands in Ireland shall consent, shall be inrolled in his Majesty's High Court of Chancery in Ireland within six calendar months after the execution thereof, and not in his Majesty's High Court of Chancery in England.

#### ENTAILED MONEY.

Repeal of the statute 7 Geo. 4, c. 45, except as to proceedings commenced before 1st Jan. 1834.

Sect. 70. " That after the 31st day of December, 1833, an act passed in the seventh year of the reign of his late Majesty King George the Fourth, intituled 'An Act for repealing an act passed in the thirtieth and fortieth years of the reign of his late Majesty King George the Third, intituled 'An Act for the relief of persons entitled to entailed estates to be purchased with trust monies,' and for making further provision in lieu thereof,' shall be and the same is hereby repealed, except as to such proceedings under the act hereby repealed as shall have been commenced before the 1st day of January, 1834, and which may be continued under the authority and according to the provisions of the act hereby repealed: Provided always, that the act repealed by the said act of the seventh year of the reign of his late Majesty King George the Fourth shall not be revived.

39 & 40 Geo. 3, c. 56, not to be revived.

The previous clauses, with certain variations, to apply to lands of any tenure to be sold, where the purchase money is subject to be invested in the purchase of lands to be entailed, and where money is subject to be invested in like manner.

Sect. 71. " That lands to be sold, whether freehold or leasehold, or of any other tenure, where the money arising from the sale thereof shall be subject to be invested in the purchase of lands to be settled, so that any person, if the lands were purchased, would have an estate tail therein, and also money subject to be invested in the purchase of lands to be settled, so that any person, if the lands were purchased, would have an estate tail therein, shall for all the purposes of this act be treated as the lands to be purchased, and be considered subject to the same estates as the lands to be purchased would, if purchased, have been actually subject to; and all the previous clauses in this act, so far as circumstances will admit, shall, in the case of the lands to be sold as aforesaid being either freehold or leasehold, or of any other tenure, except copy of court roll, apply to such lands in the same manner as if the lands to be purchased with the money to arise from the sale thereof were directed to be freehold, and were actually purchased and settled; and shall, in the case of the lands to be sold as aforesaid being held by copy of court roll, apply to such lands in the same manner as if the lands to be purchased with the money to arise from the sale thereof were directed to be copyhold, and were actually purchased and settled; and shall, in the case of money subject to be invested in the purchase of lands to be so settled as afore-

til the said intended marriage shall be solemnized; and from and after the solemnization thereof, *Upon trust* that the

after the marriage upon trusts for sale.

said, apply to such money in the same manner as if such money were directed to be laid out in the purchase of freehold lands, and such lands were actually purchased and settled; save and except that in every case where under this clause a disposition shall be to be made of leasehold lands for years absolute or determinable, so circumstanced as aforesaid, or of money so circumstanced as aforesaid, such leasehold lands or money shall, as to the person in whose favour or for whose benefit the disposition is to be made, be treated as personal estate, and, except in case of bankruptcy, the assurance by which the disposition of such leasehold lands or money shall be effected shall be an assignment by deed, which shall have no operation under this act unless inrolled in his Majesty's High Court of Chancery within six calendar months after the execution thereof; and in every case of bankruptcy the disposition of such leasehold lands or money shall be made by the commissioner, and completed by inrolment in the same manner as hereinbefore required in regard to lands not held by copy of court roll.

Stat. 3 & 4  
Will. 4, c. 74.

Sect. 72. "That so far as regards any person adjudged a bankrupt under any such fiat as aforesaid, the provisions of the clause lastly hereinbefore contained shall, for the benefit of the creditors of the bankrupt, apply to lands in Ireland to be sold, whether freehold or leasehold, or of any other tenure, where the money arising from the sale thereof shall be subject to be invested in the purchase of lands to be settled, so that the bankrupt, if the lands were purchased, would have an estate tail therein, and also to money under the control of any court of equity in Ireland, or of or to which any individuals as trustees may be possessed or entitled in Ireland, and which shall be subject to be invested in the purchase of lands to be settled, so that the bankrupt, if the lands were purchased, would have an estate tail therein, as fully and effectually as if this act had throughout extended to Ireland: Provided always, that every deed to be executed by any commissioner or protector, in pursuance of this clause, in regard to lands in Ireland to be so sold as aforesaid, shall be inrolled in his Majesty's High Court of Chancery in Ireland within six calendar months after the execution thereof; but every deed to be executed by any commissioner or protector, in pursuance of this clause, in regard to money subject to be invested in the purchase of lands to be so settled as aforesaid, shall be inrolled in his Majesty's High Court of Chancery in England within six calendar months after the execution thereof, and not in his Majesty's High Court of Chancery in Ireland; saving always the rights of the King's most excellent Majesty, his heirs and successors, to any reversion or remainder in the crown in lands in Ireland to be sold.

Lands of any tenure in Ireland to be sold, where the purchase money is subject to be invested in the purchase of lands to be entailed, and money under the control of a Court of Equity in Ireland, subject to be invested in like manner, to be subject to this act in cases of bankruptcy.

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trustees or trustee for the time being of these presents do and shall, at such time or times during the lives of the said

INROLMENT OF CONVEYANCES, AND ITS EFFECTS.

As to deeds be-  
ing acknow-  
ledged before  
inrolment.

Sect. 73. "That any rule or practice requiring deeds to be acknowledged before inrolment shall not apply to any deed by this act required to be inrolled in his Majesty's High Court of Chancery in England or Ireland.

Every deed in-  
rolled disposing  
of lands or mo-  
ney under this  
act, to take ef-  
fect as if inrol-  
ment not re-  
quired.

Sect. 74. "That every deed required to be inrolled in his Majesty's High Court of Chancery in England or Ireland, by which lands or money subject to be invested in the purchase of lands shall be disposed of under this act, shall, when inrolled as required by this act, operate and take effect in the same manner as it would have done if the inrolment thereof had not been required, except that every such deed shall be void against any person claiming the lands or money thereby disposed of, or any part thereof, for valuable consideration, under any subsequent deed duly inrolled under this act, if such subsequent deed shall be first inrolled.

The Court of  
Chancery to re-  
gulate the fees  
to be paid for  
the inrolment  
of deeds, &c.

Sect. 75. "That it shall be lawful for his Majesty's High Court of Chancery in England, as to deeds to be inrolled in England under this act, and for his Majesty's High Court of Chancery in Ireland, as to deeds to be inrolled in Ireland under this act, from time to time to make such orders as the court shall think fit touching the amount of the fees and charges to be paid for the inrolment of such deeds, and to be paid for searches for such deeds in the Office of Inrolments, and to be paid for copies of the inrolments of deeds under this act, where such copies are examined with the inrolments, and signed by the proper officer having the custody of such inrolments.

The Court of  
Common Pleas  
to regulate the  
fees for entries  
on court rolls of  
and indorse-  
ments on deeds,  
and for taking  
consents, &c.

Sect. 76. "That it shall be lawful for his Majesty's Court of Common Pleas at Westminster from time to time to make such orders as the Court shall think fit touching the amount of the fees and charges to be paid for the entries of deeds by this act required to be entered on the court rolls of manors, and for the indorsements thereon, and for taking the consents of the protectors of settlements of lands held by copy of court roll, where such consents shall not be given by deed, and for taking surrenders by which dispositions shall be made under this act by tenants in tail of lands held by copy of court roll, and for entries of such surrenders or the memorandums thereof on the court rolls.

CONVEYANCES BY MARRIED WOMEN.

A married wo-  
man, with her  
husband's con-  
currence, may  
dispose of lands  
and money sub-

Sect. 77. "That, after the 31st day of December, 1833, it shall be lawful for every married woman, in every case except that of being tenant in tail, for which provision is already made by this act, by deed to dispose of lands of any tenure, and money subject to be invested in the purchase



[*intended husband*] and [*intended wife*], his intended wife, and the life of the survivor of them, as they the said [*intend-*

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of lands, and also to dispose of, release, surrender, or extinguish any estate which she alone, or she and her husband in her right, may have in any lands of any tenure, or in any such money as aforesaid, and also to release or extinguish any power which may be vested in or limited or reserved to her in regard to any lands of any tenure, or any such money as aforesaid, or in regard to any estate in any lands of any tenure, or in any such money as aforesaid, as fully and effectually as she could do if she were a feme sole; save and except that no such disposition, release, surrender, or extinguishment shall be valid and effectual unless the husband concur in the deed by which the same shall be effected, nor unless the deed be acknowledged by her as hereinafter directed: Provided always, that this act shall not extend to lands held by copy of court roll of or to which a married woman, or she and her husband in her right, may be seised or entitled for an estate at law, in any case in which any of the objects to be effected by this clause could before the passing of this act have been effected by her, in concurrence with her husband, by surrender into the hands of the lord of the manor of which the lands may be parcel.

ject to be invested in the purchase of lands, and of any estate therein; and to release and extinguish powers, as a feme sole.

Not to extend to copyholds in certain cases.

Sect. 78. " Provided always, that the powers of disposition given to a married woman by this act shall not interfere with any power which, independently of this act, may be vested in or limited or reserved to her, so as to prevent her from exercising such power in any case, except so far as by any disposition made by her under this act she may be prevented from so doing in consequence of such power having been suspended or extinguished by such disposition.

The powers of disposition given to a married woman by this act not to interfere with any other powers.

Sect. 79. " That every deed to be executed by a married woman for any of the purposes of this act, except such as may be executed by her in the character of protector for the sole purpose of giving her consent to the disposition of a tenant in tail, shall, upon her executing the same, or afterwards, be produced and acknowledged by her as her act and deed before a judge of one of the superior courts at Westminster, or a Master in Chancery, or before two of the perpetual commissioners, or two special commissioners, to be respectively appointed as hereinafter provided.

Every deed by a married woman, not executed by her as protector, to be acknowledged by her before a judge, &c.

Sect. 80. " That such Judge, Master in Chancery, or commissioners as aforesaid, before he or they shall receive the acknowledgment by any married woman of any deed by which any disposition, release, surrender, or extinguishment shall be made by her under this act, shall examine her apart from her husband, touching her knowledge of such deed, and shall ascertain whether she freely and voluntarily consents to such deed, and, unless she freely and voluntarily consent to such deed, shall not permit

The judge, &c., before receiving such acknowledgment, to examine her apart from her husband.

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*ed husband*] and [*intended wife*], or the survivor of them, shall in that behalf direct, by any writing or writings under

Stat. 3 & 4  
Will. 4, c. 74.

As to the appointment of perpetual commissioners for each county or place, and the making out and keeping of the lists of the commissioners and the delivery of copies.

her to acknowledge the same; and in such case such deed shall, so far as relates to the execution thereof by such married woman, be void.

Sect. 81. "That for the purpose of providing convenient means of taking acknowledgments by married women of the deeds to be executed by them as aforesaid, the Lord Chief Justice of the Court of Common Pleas at Westminster shall from time to time appoint such proper persons as he shall think fit, for every county, riding, division, soke, or place for which there may be a clerk of the peace, to be perpetual commissioners for taking such acknowledgments, and such commissioners shall be removable by and at the pleasure of the said Lord Chief Justice; and lists of the names of such commissioners for the time being, with the names of their places of residence, and the counties, ridings, divisions, sokes, or places for which they shall be respectively appointed to act, shall from time to time be made out and be kept by the officer of the Court of Common Pleas at Westminster, with whom the certificates of the acknowledgments by married women are to be lodged as hereinafter mentioned; and such officer shall from time to time transmit, without fee or reward, to the clerk of the peace for each county, riding, division, soke, or place, or his deputy, a copy of the list to be so from time to time made out for that county, riding, division, soke, or place, and such officer shall deliver a copy, signed by him, of the list for the time being for any county, riding, division, soke, or place, to any person applying for the same; and the clerk of the peace for each county, riding, division, soke, or place, or his deputy, shall deliver a copy, signed by him, of the list last transmitted to him as aforesaid to any person applying for the same.

Power of perpetual commissioners not confined to any particular place.

Sect. 82. "Provided always, That any person appointed commissioner for any particular county, riding, division, soke, or place, shall be competent to take the acknowledgment of any married woman wheresoever she may reside, and wheresoever the lands or money in respect of which the acknowledgment is to be taken may be.

If, from being beyond seas, &c. a married woman be prevented from making the acknowledgment, special commissioners to be appointed.

Sect. 83. "That in those cases where, by reason of residence beyond seas, or ill-health, or any other sufficient cause, any married woman shall be prevented from making the acknowledgment required by this act before a judge or a Master in Chancery, or any of the perpetual commissioners to be appointed as aforesaid, it shall be lawful for the Court of Common Pleas at Westminster, or any judge of that court, to issue a commission specially appointing any persons therein named to be commissioners to take the acknowledgment by any married woman to be therein named of any such deed as aforesaid: Provided always, that every such commission shall be made returnable within such time, to be therein expressed, as the said court or judge shall think fit.

his, her, or their hands or hand, and after the decease of the survivor of them, at such time or times as to the said trustees

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Sect. 84. "That when a married woman shall acknowledge any such deed as aforesaid, the Judge, Master in Chancery, or commissioners taking such acknowledgment shall sign a memorandum, to be indorsed on or written at the foot or in the margin of such deed, which memorandum, subject to any alteration which may from time to time be directed by the Court of Common Pleas, shall be to the following effect: *videlicet*,

When a married woman shall acknowledge a deed, the person taking the acknowledgment to sign a memorandum to the effect here mentioned,

'THIS deed, marked [*here add some letter or other mark, for the purpose of identification*], was this day produced before me [*or us*], and acknowledged by — therein named to be her act and deed; previous to which acknowledgment the said — was examined by me [*or us*], separately and apart from her husband, touching her knowledge of the contents of the said deed and her consent thereto, and declared the same to be freely and voluntarily executed by her.'

And the same Judge, Master in Chancery, or commissioners, shall also sign a certificate of the taking of such acknowledgment, to be written or engrossed on a separate piece of parchment; which certificate, subject to any alteration which may from time to time be directed by the Court of Common Pleas, shall be to the following effect; *videlicet*,

and also sign a certificate of the taking of such acknowledgment to the effect here mentioned.

'THESE are to certify, That, on the — day of —, in the year one thousand eight hundred and —, before me the undersigned, Sir Nicholas Conyngham Tindal, Lord Chief Justice of the Court of Common Pleas at Westminster, [*or, before me, Sir James Parke, Knight, one of the Justices of the Court of King's Bench at Westminster; or, before me the undersigned, James William Farrer, one of the Masters in Ordinary of the Court of Chancery; or, before us, A. B. — and C. D. —, two of the perpetual commissioners appointed for the —, for taking the acknowledgments of deeds by married women, pursuant to an act passed in the — year of the reign of his Majesty King William the Fourth, intituled 'An Act [*insert the title of this act*]; or, before us the undersigned, A. B. — and C. D. —, two of the commissioners specially appointed pursuant to an act passed in the — year of the reign of his Majesty King William the Fourth, intituled 'An Act [*insert the title of this act*], for taking the acknowledgment of any deed by — the wife of —*] appeared personally — the wife of —, and produced a certain indenture, marked [*here add the mark*], bearing date the — day of —, and made between [*insert the names of the parties*], and acknowledged the same to be her act and deed: And I [*or we*] do hereby certify, that the said — was, at the time of her acknowledging the said deed, of full age and competent understanding, and that she was examined by me [*or us*] apart from her husband, touching her knowledge of

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or trustee for the time being shall seem expedient or proper, absolutely sell and dispose of the said — and premises

Stat. 3 & 4  
Will. 4, c. 74.

the contents of the said deed, and that she freely and voluntarily consented to the same.'

Certificate with affidavit verifying the same, to be lodged with some officer of the Court of Common Pleas, who shall cause the same to be filed of record in the Court.

Sect. 85. "That every such certificate as aforesaid of the taking of an acknowledgment by a married woman of any such deed as aforesaid, together with an affidavit by some person verifying the same, and the signature thereof by the party by whom the same shall purport to be signed, shall be lodged with some officer of the Court of Common Pleas at Westminster, to be appointed as hereinafter mentioned; and such officer shall examine the certificate, and see that it is duly signed, either by some Judge or Master in Chancery, or by two commissioners appointed pursuant to this act, and duly verified by affidavit as aforesaid, and shall also see that it contains such statement of particulars as to the consent of the married woman as shall from time to time be required in that behalf; and if all the requisites in this act in regard to the certificate shall have been complied with, then such officer shall cause the said certificate and the affidavit to be filed of record in the said Court of Common Pleas.

On filing certificate, the deed, by relation, to take effect from time of acknowledgment.

Sect. 86. "That when the certificate of the acknowledgment of a deed by a married woman shall be so filed of record as aforesaid, the deed so acknowledged shall, so far as regards the disposition, release, surrender, or extinguishment thereby made by any married woman whose acknowledgment shall be so certified concerning any lands or money comprised in such deed, take effect from the time of its being acknowledged, and the subsequent filing of such certificate as aforesaid shall have relation to such acknowledgment.

The officer with whom the certificates are lodged to index the same.

Sect. 87. "That the officer of the Court of Common Pleas with whom such certificates as aforesaid shall be lodged, shall make and keep an index of the same, and such index shall contain the names of the married women and their husbands alphabetically arranged, and the dates of such certificates and of the deeds to which the same shall respectively relate, and such other particulars as shall be found convenient; and every such certificate shall be entered in the index as soon as may be after such certificate shall have been filed.

Officer to deliver a copy of certificate filed, which shall be evidence.

Sect. 88. "That, after the filing of any such certificate as aforesaid, the officer with whom the certificate shall be lodged shall at any time deliver a copy, signed by him, of any such certificate to any person applying for such copy; and every such copy shall be received as evidence of the acknowledgment of the deed to which such certificate shall refer.

Chief Justice of Common Pleas to appoint the officer with

Sect. 89. "That the Lord Chief Justice of the Court of Common Pleas at Westminster shall from time to time appoint the person who shall be the officer with whom such certificates as aforesaid shall for the time be-



hereby bargained and sold, or expressed and intended so to be, with their appurtenances, for an estate of inheritance in

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ing be lodged, and may remove him at pleasure; and the Court of Common Pleas at Westminster shall also from time to time make such orders and regulations as the Court shall think fit touching the mode of examination to be pursued by the commissioners to be appointed under this act, and touching the particular matters to be mentioned in such memorandums and certificates as aforesaid, and the affidavits verifying the certificates, and the time within which any of the aforesaid proceedings shall take place, and touching the amount of the fees or charges to be paid for the copies to be delivered by the clerks of the peace or their deputies, or by the officer of the said Court, as hereinbefore directed, and also of the fees or charges to be paid for taking acknowledgments of deeds and for examining married women, and for the proceedings, matters, and things required by this act to be had, done, and executed for completing and giving effect to such acknowledgments and examinations.

whom the certificates shall be lodged; and the Court to make orders touching the examination, memorandums, certificates, affidavits, &c.

Sect. 90. "That in every case in which a husband and wife shall, either in or out of Court, surrender into the hands of the lord of a manor any lands held by copy of court roll, parcel of the manor, and in which she alone, or she and her husband in her right, may have an equitable estate, the wife shall, upon such surrender being made, be separately examined by the person taking the surrender in the same manner as she would have been if the estate to which she alone, or she and her husband in her right, may be entitled in such lands were an estate at law instead of a mere estate in equity; and every such surrender, when such examination shall be taken, shall be binding on the married woman and all persons claiming under her; and all surrenders heretofore made of lands similarly circumstanced, where the wife shall have been separately examined by the person taking the surrender, are hereby declared to be good and valid.

A married woman to be separately examined on the surrender of an equitable estate in copyholds as if such estate were legal.

Sect. 91. "Provided always, that if a husband shall, in consequence of being a lunatic, idiot, or of unsound mind, and whether he shall have been found such by inquisition or not, or shall from any other cause be incapable of executing a deed, or of making a surrender of lands held by copy of court roll, or if his residence shall not be known, or he shall be in prison, or shall be living apart from his wife, either by mutual consent or by sentence of divorce, or in consequence of his being transported beyond the seas, or from any other cause whatsoever, it shall be lawful for the Court of Common Pleas at Westminster, by an order to be made in a summary way upon the application of the wife, and upon such evidence as to the said Court shall seem meet, to dispense with the concurrence of the husband in any case in which his concurrence is required by this act

Court of Common Pleas in the case of a husband being lunatic, &c. may dispense with his concurrence, except where the Lord Chancellor or other persons intrusted with lunatics, or the Court of Chancery, shall be the protector of a settlement in lieu of the husband.

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fee simple, either by public sale or auction or by private contract, to any person or persons who shall be willing to be-

Stat. 3 & 4  
Will. 4, c. 74.

or otherwise; and all acts, deeds, or surrenders to be done, executed, or made by the wife in pursuance of such order, in regard to lands of any tenure, or in regard to money subject to be invested in the purchase of lands, shall be done, executed, or made by her in the same manner as if she were a feme sole, and when done, executed, or made by her shall (but without prejudice to the rights of the husband as then existing independently of this act) be as good and valid as they would have been if the husband had concurred: Provided always, that this clause shall not extend to the case of a married woman where under this act the Lord High Chancellor, Lord Keeper or Lords Commissioners for the custody of the Great Seal, or other the person or persons intrusted with the care and commitment of the custody of the persons and estates of persons found lunatic, idiot, and of unsound mind, or his Majesty's High Court of Chancery, shall be the protector of a settlement in lieu of her husband.

Ireland.

Sect. 92. "That this act shall not extend to Ireland, except where the same is expressly mentioned."

#### REMARKS ON STAT. 3 & 4 WILL. 4, c. 74.

- I. ABOLITION OF FINES AND COMMON RECOVERIES, 402.
- II. ALIENING POWER OF TENANTS IN TAIL, 403.
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#### I. ABOLITION OF FINES AND COMMON RECOVERIES.

Enactments respecting fines and common recoveries.

The legislature has accompanied the abolition of fines and common recoveries with some excellent provisions remedial of certain defects to which these assurances were especially liable, namely, the misnomer of parties, the mis-description or omission of lands, and, in regard to re-

come the purchaser or purchasers thereof respectively, at such price or prices or sum or sums of money as to the said

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coveries, the non-inrolment *in due time* (for it seems doubtful whether the act dispenses with the inrolment altogether) of bargains and sales making a tenant to the præcipe, or the non-concurrence of the legal freeholder; provided, however, in the latter case, that the person beneficially entitled in possession to an estate for life, or some larger interest (not being a mere lessee holding at a rent), should have joined in the conveyance. Beyond this particular case, there seems to be no dispensation with the necessity of a good tenant to the præcipe.

Stat. 3 & 4  
Will. 4, c. 74.

It is observable, that the act does not render valid fines and recoveries where there has been any dealing with the property on the faith of their being invalid, nor does the act apply to a fine or recovery which a Court of competent jurisdiction shall have refused to amend; which is important, because, as the fact of such refusal does not appear on the face of the deed, it becomes unsafe to rely upon the act as curing a defect which might have been the subject of an unsuccessful application to the Court without being satisfied that no such application has been made. It is presumed that the refusal to amend would not (as the language of the act would seem to import) take the fine or recovery out of the scope of these validating provisions *ultra* the particular matter which was the subject of the application; for instance, the failure of an attempt to get a recovery amended by the enlargement of the parcels merely, would not prevent the act from dispensing with the concurrence of the legal owner of the immediate freehold, or the inrolment within six months of the bargain and sale making the tenant to the præcipe.

Sections 4, 5, and 6, regulate the effect of fines and recoveries levied and suffered in the Court of Common Pleas of lands of the tenure of ancient demesne; and section 5 contains a general provision validating fines and recoveries levied and suffered in Courts not having jurisdiction over the lands. This provision should be borne in mind, because it precludes the possibility of ascertaining that no fine or common recovery has been levied or suffered of any given property, without searching not only the Court of Common Pleas at Westminster, but the records of every Court having peculiar jurisdiction throughout England and Wales.

## II. ALIENING POWER OF TENANTS IN TAIL.

The 15th section is the general enabling clause applicable to tenants in tail, which is followed by various provisions, defining the qualifications and limitations under which the disposing power so given is to be exercised. The act of 11 Hen. 7, c. 20 (stated *ante*, p. 99) is repealed as to future settlements; but a woman tenant in tail *ex provisione viri*, under an existing settlement, must obtain the assent required by that statute.

Alienations by  
tenants in tail.

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trustees or trustee for the time being shall seem proper, and do and shall, for the purposes aforesaid, (by such direction

Stat. 3 & 4  
Will. 4, c. 74.

Reversions and remainders belonging to the crown preserve their indestructible character.

Expectant heirs  
in tail.

Expectant heirs in tail have no power in analogy to that which they derived under the statute 4 Hen. 7, c. 24, and 32 Hen. 8, c. 36\*, of barring the claims of their issue by means of a fine with proclamations; nor is the efficacy which belonged to such fine, *as a bar by nonclaim*, communicated to the substituted assurances, unless in the special cases falling within the third section.

Base fees.

A tenant in tail, whose estate has been converted into a base fee, is not thereby prevented from afterwards aliening in fee simple; but it is to be observed that a conveyance in fee under the act by a tenant in tail will enure (except as against a purchaser for value without *express* notice) to confirm a voidable estate antecedently created in favour of a purchaser for value. In these two instances the reader will discover traces of the old learning.

Effect where  
tenant in tail  
has the immediate reversion  
in fee.

Where an assurance in fee is made by a tenant in tail, who has also the immediate reversion or remainder in fee, the estate tail is enlarged to a fee simple, and is not merged, such assurance being assimilated in effect to a common recovery, which operated in this manner, and did not, like a fine with proclamations, extinguish the estate tail, and thereby let in the reversion or remainder, with all the incumbrances affecting it. The effect of this doctrine may be illustrated by the following case. Suppose A., on his marriage, to limit lands to himself for life, with remainder to the first and every other son of the marriage successively in tail, with reversion to himself in fee, and afterwards by his will to devise all his lands, charged with legacies, to B., the eldest son of the marriage, in fee. B., the tenant in tail, conveys the fee simple by a conveyance inrolled to C., C. would take the lands *discharged from the legacies with which the reversion in fee was operated by the will of A.*

Partial dispositions.

Dispositions by way of mortgage, or for any other limited purpose, are the subject of rather a singular distinction. If the tenant in tail's assurance comprises an estate larger than an estate *pur autre vie* or for years, the entail is absolutely and completely barred in equity as well as at law to the extent of the estate so created; but, if an estate *pur autre vie*, or for years only, is created, or an "interest, charge, lien, or incumbrance," without any term of years, the bar takes effect *pro tanto* only. Thus, if a tenant in tail, by a conveyance inrolled, makes a mortgage *in fee*, with a proviso for redemption in the common form, he is thenceforth equitable owner *in fee simple* subject to the mortgage; but if he makes a

\* *Vide* these statutes, *ante*, Vol. 4, pp. 145, 146



or at such discretion as aforesaid), enter into, make, and execute all such conditions, contracts, and agreements restrictive

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mortgage for one thousand years, the entail subsists in the equity of redemption in the term no less than in the legal inheritance in fee expectant thereon, which, of course, the mortgage does not reach. If, therefore, in the latter case, the mortgagor did no further act to destroy the entail, the issue or remainder-man, to whom the lands devolved at his decease, would be entitled to redeem the mortgage.

Stat. 3 & 4  
Will. 4, c. 74.

Where a tenant in tail, who creates a mortgage in fee, is desirous that the equity of redemption should continue subject to the entail, he should distinctly express such intention. And it should seem that the property ought to be so resettled by a *separate* deed, as the act declares the entail to be barred, notwithstanding any express or implied intention to the contrary in the mortgage deed. The object, of course, might be attained without any re-settlement or declaration, by making the mortgage for a term. But, though the effect of a mortgage in fee to destroy the entail and remainders cannot be negatived by express declaration, yet, it has been truly observed by an able commentator on the act, that, if the mortgage deed is conditioned to be void on payment of the money at the prescribed day, and the condition is performed, the assurance being wholly vacated, the entail will remain in force; for which reason a mortgage in fee, which is intended to work an absolute bar, should not be so conditioned, but the proviso for redemption should direct a reconveyance on the payment of the money. (Hayes's *Introd. Conv.* 203).

### III. PROTECTORSHIP OF THE SETTLEMENT.

The act, it will be perceived, has preserved, with some modification, the difference formerly existing (but which flowed entirely from the technical nature of a common recovery) between the extent of the alienable dominion of a tenant in tail *in possession*, and that of a tenant in tail *in remainder*. The controlling power, formerly possessed by the owner of the immediate freehold, (which it was deemed inexpedient to abrogate), has been placed in the hands of the new functionary, called the protector of the settlement, without whose concurrence a tenant in tail can only acquire a base fee, in other words, an estate commensurate with the continuance of his issue inheritable under the entail, which is precisely the measure of estate that a tenant in tail could in general have acquired before the statute by means of a fine with proclamations.

Protectorship of  
the settlement.

The provisions respecting the protectorship apply to settlements executed antecedently as well as subsequently to the passing of the act, except in certain specified instances, namely, first, where the estate, which formerly would have conferred the power of making the tenant to the præcipe, has been disposed of on or before the 31st of December, 1833;

Distinction in  
regard to the  
time of the ex-  
ecution of the  
settlement.

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of the title or evidence of title to be required by any purchaser or purchasers (*b*), and concerning any other matters

secondly, where the person, who would be protector under the act, has, on or before the 31st of December, 1833, wholly or partially aliened the reversion or remainder in fee; thirdly, where, under a settlement made before the passing of the act, or on or before the 31st of December, 1833\*, the immediate freehold is in a bare trustee. In these several instances, the person who before the act would have been authorized to make the tenant to the præcipe for suffering a common recovery, is constituted the protector.

In all other cases the protectorship is made a *personal* office. In the absence of any declaration to the contrary, it resides in the person taking beneficially a prior estate for life, or for years determinable with life, or the first of several such estates, (not claiming as lessee at a rent, or as tenant in dower, or as heir, executor, administrator, or assign); and the office adheres to the taker of such estate after alienation, bankruptcy, or insolvency. Thus, under the ordinary limitations in a marriage settlement to the use of the intended husband for life, with remainder to the wife for life, with remainder to the first and every other son of the marriage successively in tail, the husband would be the protector during his life, (whether he retained his interest in the property or not), and after his death the wife, if living, would succeed to the office,

Remark upon  
clause in the  
prece nt in the  
text.

(*b*) The practice of introducing into contracts and conditions of sale special stipulations with respect to evidence of title is now so prevalent, that it seems proper to include it among the discretionary powers given to trustees for sale, as otherwise it is not clear that they would be authorized to sell under special conditions of this nature; and, if not, a purchaser might resist the performance of the contract on the ground that the trustees had exceeded their authority; and still more clear is it, that a purchasing trustee ought not, without express authority, to buy under stipulations which preclude him from insisting on a marketable title. Such a discretion, however, ought not, as a matter of course, to be vested in a trustee.

Point as to the  
construction of  
the 31st section  
of stat. 3 & 4  
Will. 4, c. 74.

\* There seems to be a discrepancy between the 27th and 31st sections. The 31st section applies to settlements executed "*before the passing of the act*," (*i. e.* before the 28th of August, 1833, when the act received the royal assent); but the 27th section refers to it as applying to settlements made "*on or before the 31st of December, 1833.*" Hence arises the question, whether, under a settlement executed in the interval between the two periods, vesting the immediate freehold in a bare trustee, such trustee is protector. According to the 31st section, as referred to by the 27th, he would; according to the terms of the 31st section itself, he

or things connected with the said sale as to the said trustees or trustee shall seem reasonable, and they or he are or is here-

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and would, in like manner, retain it during life, whether continuing to be tenant for life or not.

Stat. 3 & 4  
Will, 4, c. 74.

Where husband and wife are seised *jure uxoris*, the protectorship is in both, but where the property is settled or agreed to be settled to the separate use of the wife, she is sole protector. No express provision seems to be made for the case of the husband and wife being seised of the prior estate *as tenants by entreties*, which is the nature of their estate under a conveyance to both after the marriage.

Husband and  
wife, where pro-  
tector.

Where there are several co-owners of the prior estate, each is protector in respect of his own share.

Undivided  
shares.

But the settlor or testator, instead of allowing the protectorship to devolve to the owner of the prior estate, may appoint any person or persons *in esse* (not exceeding three in number, and not being aliens,) to be protector of the settlement during the whole or part of such prior estate, and may vest in any third person or persons the power of supplying vacancies in the office occasioned by death or voluntary relinquishment. The requisition that the nominees shall be persons *in esse* refers, it is presumed, to the time of nomination, and not to the period of the execution of the settlement. The owner of the prior estate may be one of the protectors, and will (unless the settlor otherwise directs) continue to be the protector after the death or resignation of the other until a new appointment.

Settlor's power  
of appointing  
protector, and  
of enabling third  
persons to sup-  
ply vacancies.

Where several estates, each sufficient in point of extent to carry the protectorship, are limited in succession, and the first estate belongs to a lessee at a rent, a tenant in dower, or a bare trustee, heir, executor, administrator, or assign, the office will devolve to the person next in remainder, if any, being competent. In other instances, where the prior estate is vested in a person whom the settlor declares not to be or the act incapacitates from being protector, or the office gets into the hands of a lunatic, traitor, or felon, or one whose existence cannot be ascertained, or an infant, (not being owner of the prior estate), it devolves to the Lord Chancellor sitting in matters of lunacy, or the Court of Chancery, whose consent may be expressed by order made upon motion or petition. In other instances, a consenting protector should be made a party to the disentailing conveyance, or should execute a separate deed, which must be inrolled before or together with the conveyance. Priority in the *execution* of either deed does not seem to be material. A married woman is empowered to give her consent as if she were a feme sole. The protector's consent is presumed to be absolute and unqualified, unless a particular disposition is referred to, and when once given cannot be revoked.

Protectorship  
given to the  
owner of suc-  
ceeding estate,  
where.

Protector's con-  
sent how to be  
given.

would not. It is possible, that no case may occur to raise the question.

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by empowered in their or his discretion to buy in the said hereditaments, or any part thereof, at any auction or auc-

Stat. 3 & 4  
Will. 4, c. 74.

Courts of equity are not to enforce specific performance of contracts by tenants in tail and protectors, or supply defects in instruments executed by them, it being considered more expedient that particular cases of hardship should remain unredressed, than that the floodgates of litigation should be thrown open by admitting equitable interference.

Suggestion as to  
the appointment  
of protector.

Settlors and testators who create limitations in strict settlement, and are desirous to prevent the tenant for life and the next remainder-man in tail, (usually his eldest son), from conjointly acquiring the fee simple, (which is often done as soon as the latter attains his majority), will probably avail themselves of the power conferred by the act of vesting the protectorship in some third person. The office might even be given to the ultimate remainder-man himself, who would have a direct interest in withholding his consent to the tenant in tail's alienation. It is observable, that though the act does not require that the protector should be disinterested, it anxiously declares his discretion to be uncontrollable. It would be impossible, therefore, to interfere with the discretion of a protector who should even stipulate for the payment to himself of a sum of money as the price of his consent. Such a transaction, however, would be defensible only where the protector had an ulterior beneficial interest, which would be affected by the proposed alienation.

#### IV. COMPARISON OF THE LATE WITH THE PRESENT POWER OF DISPOSITION BY TENANT IN TAIL.

Comparison of  
the aliening  
power of a ten-  
ant in tail be-  
fore and since  
the act.

It will be seen, that the power of a tenant in tail over the fee simple under the recent act is not in every respect co-extensive with that which he before enjoyed. The act has *curtailed* his disposing power by requiring him to obtain the consent of a person having a prior estate for years determinable with life\*, whose concurrence as the owner of a *chat-tel* interest merely would not have been requisite to enable a tenant in tail to suffer a common recovery. By making the protectorship, too, a personal office, instead of annexing it inseparably to the ownership of the prior estate, the legislature has rendered it possible that a tenant in tail in remainder may become, by the acquisition of such prior estate, tenant in tail in possession, without emancipating himself from the fetter on his aliening power; indeed he may *ab origine* have had the immediate inheritance expectant on a term of years determinable with life, and yet be under such restraint—cases which could not have existed before the act;

\* It is observable, that the term need not be of any given length, so that a term of even seven years, determinable with life, would carry the protectorship, while an absolute term of any duration will not.



tions, and resell the same, or any part thereof, either by public auction or private contract, and also to rescind or

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while, on the other hand, a tenant for life, or for years determinable with life, being the protector of the settlement, may enable the tenant in tail in remainder to acquire a fee simple, without parting with or in the least disturbing his (the protector's) estate. His *consent* alone is requisite. It seems correct, therefore, that the protector should be made to express his consent to the destruction of the estate tail and the remainders, independently of his act of conveying, though no doubt his consent would be implied, as the declared object of the conveyance in which he joins is the destruction of the entail and remainders.

Stat. 3 & 4  
Will. 4, c. 74.

Before the statute, it was very doubtful, whether a contingent or executory interest in tail could be enlarged into a fee simple by means of a common recovery, but such an interest evidently falls under the denomination of an "estate tail in contingency," the owner of which is now enabled to acquire the fee simple by a deed inrolled. Thus, if lands were limited to A. and his heirs in fee, and if he should die under the age of twenty-one years without issue, then to B. in tail, it is clear that B., with the concurrence of A., (supposing the protectorship not to be severed from A.'s estate), might enlarge his executory entail into an executory fee simple. If the protector did not join, B. might, of course, acquire an executory fee determinable on the failure of his issue.

Contingent or  
executory es-  
tates tail.

Another important accession to the *jus disponendi* of a tenant in tail is, that he is not required to obtain the concurrence of the owner of a prior estate of freehold, or of years determinable with life, *where such prior estate and the estate tail are created by different assurances*; for it is to be observed, that the 22nd section, which imposes the necessity of obtaining the consent of the protector of the settlement, only applies "if, at any time when there shall be a tenant in tail of lands under a settlement, there shall be subsisting in the same lands, or any of them, *under the same settlement*, any estate for years determinable on the dropping of a life or lives, or any greater estate (not being an estate for years) prior to the estate tail;" so that, if, after the 31st of December, 1833, lands were devised or conveyed to A. for life, with remainder to B. in fee, and B., by deed or will, limited his remainder to C. in tail, C., the tenant in tail in remainder, might, without the concurrence of A., the prior tenant for life, acquire the remainder in fee simple by a deed inrolled, though before the statute C. could not have suffered a common recovery, unless enabled so to do by the junction of A., the owner of the immediate freehold. It is observable, that there is no such distinction in regard to settlements made on or before the 31st of December, 1833, of which the owner of the immediate freehold (being entitled as trustee) is constituted the protector, whether, as it should seem, such freehold

Prior estate and  
entail must be  
created by the  
same instru-  
ment.

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vary the terms of any contract or contracts that shall have been entered into, and to prosecute, defend, or abandon any

Stat. 3 & 4  
Will. 4, c. 74.

were created by the same instrument as the estate tail or not. Indeed, as such cases evidently belong to the old system, any such distinction would have been absurd.

V. ASSURANCES OF FREEHOLDS BY TENANTS IN TAIL\*.

Conveyances by  
tenant in tail  
of freeholds,  
how to be made.

The legislature, in prescribing the manner in which the new disposing power of a tenant in tail is to be exercised, has cautiously and it is conceived wisely abstained from interfering with the existing modes of conveyance, farther than by simply superadding the solemnity of an inrolment in Chancery. By the 40th section, a tenant in tail of freehold hereditaments is to convey "by some one of the assurances (not being a will) by which such tenant in tail could have made the disposition if his estate were an estate at law in fee simple absolute." Accordingly, if he is tenant in tail in possession, the conveyance should be by feoffment, bargain and sale under stat. 27 Hen. 8, c. 16, or lease and release†; if he is tenant in tail in remainder, the conveyance may be by grant at common law, or by bargain and sale. There is a convenience in making a tenant in tail in possession convey by bargain and sale inrolled, as it takes effect without a lease or bargain and sale for a year, (which must precede a release), or livery of seisin, (which must accompany a feoffment), and one inrolment answers the double purpose of giving effect to the instrument as a bargain and sale of a use under the stat. 27 Hen. 8, c. 16, and as a conveyance by tenant in tail under the present statute; but the impediments which have always existed to the general adoption of this mode of conveyance, namely, that it is inapplicable where powers or limitations in favour of unborn persons are to be created, will probably still induce the preference of a conveyance by lease and release, the ordinary assurance of modern times.

Conveyances by  
equitable owners  
in tail, &c.

There seems to be no difference between the mode of conveyance by a legal and an equitable tenant in tail. Even the latter must convey as if his interest were *an estate at law*. An inrolled conveyance would have the same effect upon an executory entail, as if the interest of the grantor had been an executory fee simple. Such an assurance operates on the land, when the contingency happens under the doctrine of estoppels, which only requires that the conveyance should be by *indenture*, and,

\* In this summary of the clauses of the act, their order has not been invariably adhered to.

† Covenants to stand seised have not been included in this enumeration, being practically obsolete.

suit that shall happen to be instituted by or against the said trustees or trustee to enforce or compel the specific perform-

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Stat. 3 & 4  
Will. 4, c. 74.

Comparison of  
inrolment under  
stat. 3 & 4  
Will. 4, c. 74,  
and 27 Hen. 8,  
c. 16.

As to the ac-  
knowledgegment  
of execution, as  
a preliminary to  
inrolment.

according to some authorities (which have never been overruled though sometimes overlooked), that the grantor's destitution of estate should not appear on the face of the conveyance. (*Vide ante*, Vol. 4, p. 225, 2nd ed.)

It may be useful to compare the inrolment required by the act under consideration with that of a bargain and sale under the stat. 27 Hen. 8, c. 16. A disentailing conveyance must be inrolled in *Chancery* within six *calendar* months—a bargain and sale may be inrolled in *any* of the Courts at Westminster, or with the clerk of the peace in the county where the lands are situate, within six *lunar* months, which period is enlarged by the late act, in regard to inrolments in *Chancery*, to six *calendar* months, thereby rendering the inrolment under the two statutes *pro tanto* uniform. The act of Hen. 8 requires (what in practice nearly every conveyance is) an *indenture*, and the recent statute is satisfied by a conveyance by *deed*. The late act also expressly dispenses with the acknowledgment of execution, which it is usual to require previously to the inrolment of a bargain and sale. There is nothing, however, to prevent a conveyance inrolled under the statute of 3 & 4 Will. 4, c. 74, *though not acknowledged*, from taking effect as a bargain and sale under the stat. 27 Hen. 8, c. 16, since acknowledgment is not required by the latter statute, (see *Absolon and Anderton's case*, 3 Leon. 84), but is exacted merely by a regulation of the Inrolment Office; nor is it necessary in order to give parties the benefit of the statute of 10 Ann. c. 18, which makes a copy of the inrolment admissible in evidence without the production of the original deed; the established distinction in regard to that statute being, that it applies to a bargain and sale or other deed which is inrolled under the direction of an act of Parliament, whether acknowledged or not, but does not render admissible the copy of the inrolment of a deed which is inrolled without such authority, *except as against the party or parties acknowledging it*. (See Phillips on Evid. 3rd ed. 410). If the officers of the Inrolment Office should refuse to inrol a disentailing conveyance, unless it has been acknowledged, or is shewn not to operate as a bargain and sale, they will involve themselves in difficulties; for, in attempting to discriminate between bargains and sales and other assurances, they must either be guided by the mere title of the deed, which affords no criterion as to its actual operation, or must investigate the title of the grantor for the purpose of obtaining more accurate information on the point.

It is observable, that a conveyance may happen to be inrolled in Chancery for no less than *three* distinct purposes. Such a case occurs where a tenant in tail conveys his lands in fee by way of bargain and sale to charitable uses. The inrolment gives effect to the instrument, first, as a bargain and sale under stat. 27 Hen. 8, c. 16; secondly, as a

Various purposes for which inrolment may be required.

Discretionary powers vested in trustees as to sales.

Stat. 3 & 4 Will. 4, c. 74.

Cautions to be observed by vendee and mortgagee as to enrolment.

ance thereof; AND UPON FURTHER TRUST to convey and assure the said hereditaments or any part thereof, when sold,

conveyance to charitable uses under stat. 9 Geo. 2, c. 36, stated *post*, Vol. 10, p. 27; and, thirdly, as a disentailing deed under stat. 3 & 4 Will. 4, c. 74. If the property were in Middlesex or York, or within the local limits of the Bedford Level Act, registration would also be requisite.

Though the act allows six calendar months for the enrolment of a disentailing conveyance, a vendee or mortgagee should not permit more than is absolutely requisite of this interval to elapse between the payment of his money and the enrolment of the deed, lest a subsequent purchaser should obtain precedence by an earlier enrolment of his assurance. Indeed, the money ought not to be parted with until the conveyance has been enrolled\*, nor until it has been ascertained that up to the period of actual enrolment no other assurance by the tenant in tail has been enrolled. These two simple precautions will render innocuous against a vendee or mortgagee any prior dealing of the tenant in tail with the property of which he has not express notice; for it is observable that none of the provisions in the act respecting voidable estates have the effect of confirming them against purchasers for value without such notice. The enrolment of a disentailing conveyance has relation to the execution, so that intermediate conveyances by the persons deriving title under it will have their full effect.

#### VI. ASSURANCES OF COPYHOLDS BY TENANTS IN TAIL.

Entails in copyholds how to be barred.

An estate tail at law may be barred by a surrender, and an estate tail in equity either by surrender or by deed of disposition, to be entered on the manorial rolls. Where the disposition is by surrender (as it *must* be where the estate tail is legal, and as it *may* be where it is equitable), the protector may give his consent to the person taking the surrender; and, if the surrender is made out of court, the protector should subscribe his consent in the memorandum of the surrender, which memorandum and statement of consent are to be entered on the court rolls. Where the equitable tenant in tail's disposition is by deed, the protector's consent of course must be also by deed; and which, if separate from the tenant in tail's assurance, must be executed before or on the same day, and must be entered on the court rolls, for which no time is limited; but a delay to enter the disentailing deed on the rolls would expose a purchaser to the risk of letting in a subsequent purchaser, who exercised greater diligence. (*Vide* sect. 55). The protector's consent may also be given by deed, where the disposition of the tenant in tail, whether legal

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\* It should seem that a vendor ought to procure the conveyance to be enrolled under the act of 3 & 4 Will. 4, c. 74, at his own expense, for the same reason that he was required to bear the expense of a fine or common recovery.



unto the purchaser or purchasers thereof respectively, or to such other person or persons and in such other manner as

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or equitable, is by surrender, in which case the deed of consent must, at or before the time when the surrender is made, be produced to the steward, who indorses a memorandum thereof on the deed, and enters the deed and memorandum on the court rolls.

Stat. 3 & 4  
Will. 4, c. 74.

#### VII. ESTATES TAIL OF BANKRUPTS.

The commissioners are empowered to dispose by deed of lands of *any* tenure wherein the bankrupt at the issuing of the fiat, or at any time afterwards before he obtains his certificate, had an estate tail or a base fee, which conveyance is to be inrolled in Chancery in six calendar months, where the lands are freehold, and to be entered on the court rolls at *any* time where the property is copyhold. Alienations by commissioners of bankrupts stand upon the same footing with respect to the consent of the protector, as alienations by the bankrupt, except that the base fee conveyed by the commissioners, when the protector's consent is not obtained, becomes, without any further act, enlarged into a fee simple, in case, during the continuance of such fee, (*i. e.* during the continuance of issue inheritable under the entail), there should cease to be a protector. Dispositions by the commissioners, the consent of the protector, if any, being obtained, have the effect of confirming, except against purchasers without express notice, voidable estates created by the bankrupt in favour of purchasers. The commissioners' power over the estates tail of a *deceased* bankrupt is subject to special restrictions.

Estates tail of  
bankrupts.

Purchasers of copyholds are entitled to claim admittance by virtue of the commissioners' deed of disposition, without any surrender similar to that which is required by the Bankrupt Act of 6 Geo. 4, c. 16, (*vide ante*, Vol. 8, p. 226), on the sale of copyhold estates in fee simple belonging to bankrupts. Hence arises a singular variation in the modes of assuring the fee simple and fee tail estates of a bankrupt copyholder. Probably it was deemed better to create this anomaly than extend an enactment which has been found to produce much inconvenience.

Lands in Ireland belonging to bankrupt tenants in tail are made disposable by the commissioners under an English commission, but the enrolment in such cases is to be made in the Court of Chancery in *Ireland*.

#### VIII. ENTAILED MONIES.

Money directed to be invested in the purchase of lands which are to be entailed, and lands to be converted into money which is to be so invested, are for all the purposes of the act to be treated as the lands to be purchased. Suppose then Blackacre to be devised to trustees for sale, and the proceeds directed to be invested in other lands to be settled on A, in tail. So long as Blackacre remained unsold, A. might bar the

Entailed monies.

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he, she, or they respectively shall direct; And it is hereby agreed and declared, that the trustees or trustee for the time

Stat. 3 & 4  
Will. 4, c. 74.

entail by assuring it, if of freehold tenure, by a conveyance adapted to the estate intended to be conveyed; if copyhold, by a surrender or deed of disposition; if leasehold, by an assignment. If, on the other hand, Blackacre had been actually sold under the trust, but the proceeds had not been re-invested in land, A.'s mode of effecting the destruction of the entail and remainders would be to execute an assignment of the fund as personalty, and such would also be the form of the assurance in the simple case of money being directed to be laid out in the purchase of land to be settled in tail, until it is so laid out. The state of the property *de facto* in all cases determines the nature of the assurance, unless in the instance of bankruptcy, where personalty to be invested in lands is to be disposed of by the commissioners in the same manner as freehold lands. The 73rd section makes special provision for the case of bankrupts entitled to lands in Ireland, impressed with the qualities of personal estate, &c.

IX. CONVEYANCES OF REAL ESTATE BY MARRIED WOMEN, WITH GENERAL REMARKS ON THE RECENT REAL PROPERTY ACTS, ESPECIALLY IN REGARD TO THE EFFECT OF THE NEW STATUTE OF LIMITATIONS ON THE DOCTRINE OF MARKETABLE TITLES.

Married women  
empowered to  
convey by deeds  
to be acknow-  
ledged.

The clauses which range themselves under this division are few and simple. By sect. 77, a married woman is empowered by deed to dispose of lands of any tenure, and money subject to be invested in the purchase of lands, and also to dispose of, release, surrender, or extinguish any estate which she alone, or she and her husband in her right may have in any lands of any tenure, or in any such money as aforesaid, and also to release or extinguish powers, but the husband must concur; and the enactment is not to extend to copyholds in any case in which any of the objects of this clause could, before the passing of the act, have been effected by her and her husband by surrender. The act is not to interfere with any power given to a married woman, except so far as any disposition made by her under the act may operate to suspend or extinguish such power.

As to the ac-  
knowledgment.

Every deed executed by a married woman for the purposes of the act (except such as may be executed by her in the character of protector) is to be acknowledged before a Judge or Master in Chancery, or two perpetual or special commissioners: special commissions may be obtained, where, by reason of ill health or any other sufficient cause, any married woman shall be prevented from otherwise making the acknowledgment. The Court of Common Pleas is authorized to make regulations concerning the mode of examination to be pursued by the commissioners. On

being of these presents shall stand and be possessed of and interested in all and singular the sum and sums of money to

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the back, or at the foot, or in the margin of the deed, the commissioners or other persons taking the acknowledgment are to subscribe a memorandum, and, on a separate piece of parchment, a certificate; which, together with an affidavit by some person verifying the same and the signature thereof, are to be lodged with an officer of the Court of Common Pleas, who is to cause the certificate and affidavit to be filed of record. A copy of the certificate when filed of record is made evidence.

Stat. 3 & 4  
Will. 4, c. 74.

The filing of the certificate has relation to the time of the acknowledgment. But there is no provision making the acknowledgment (like the enrolment of a tenant in tail's assurance) relate back to the execution, so that the time of acknowledgment is to be considered in regard to the woman's estate as the date of the conveyance. It is important to keep this in view.

Where husband and wife surrender copyholds, in which they, in her right, have an equitable estate tail (and which we have seen may be barred either by surrender or deed), the wife is to be separately examined in the same manner as if it were an estate at law.

Wife's equitable  
entail in copy-  
holds.

The Court of Common Pleas is empowered to dispense with the concurrence of the husband in the conveyance of a married woman, if he is from lunacy or any other cause incapable of executing a deed, or of making a surrender, or if his residence is not known, or he is in prison, or if he is living apart from his wife, either by mutual consent or by sentence of divorce, or in consequence of his being transported, or any other cause whatever. The husband's *own* rights, of course, are not bound under such circumstances; the act of the Court merely dispensing with the concurrence of the husband as an ingredient in the wife's own conveyance\*.

Dispensation  
with the hus-  
band's concu-  
rence.

Here closes the brief summary which has been attempted of the principal clauses of this important act. The care and skill displayed in the penning of its numerous provisions have extorted the warm and candid praise of a writer of the highest legal celebrity, though entertaining an unfavourable opinion of the policy of the measure. (*Vide* 2 Sug. Vend. 9th ed. 387). The act, indeed, is one of the most complete of any of the legislative amendments of the law of real property passed in the last session, which appear to possess very unequal degrees of merit.

General remarks  
upon the recent  
acts.

The alterations made in the law of dower (*vide post*, Vol. 10, p. 244,) Dower act.

\* Some observations on this branch of the statutory provisions will be found in a subsequent note appended to a conveyance in which a married woman, the wife of a tenant in tail, joins for the purpose of extinguishing her right of dower.

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arise and be produced by the sale or sales which shall be made in pursuance of these presents, and also of and in the

Law of inher-  
itance act.

have engrafted many new and some rather anomalous distinctions on this ancient legal right, which perhaps presented little that required the correcting hand of the reformer, beyond what the fines and recoveries act, by enabling married women to extinguish their initiate right of dower by an acknowledged deed, had previously effected.

That imperfections existed in the old law of inheritance (*vide* recent act, stated *post*, Vol. 10, p. 218) must be admitted, but the actual inconvenience which they produced was too inconsiderable to give them a place among the pressing grievances of the legal system.

New Statute of  
Limitations.

The statute of 3 & 4 Will. 4, c. 27, which has swept away, or rather will shortly sweep away, a long catalogue of real and mixed actions, at once simplifying the remedies and shortening the period for the recovery of real property, is a measure extremely salutary in itself, and almost essential as an accompaniment to the statute abolishing fines, recoveries, and warranties. (*Vide ante*, pp. 369, 374, also Vol. 4, p. 148). Two acts having the same beneficial tendency to promote the security of property against dormant or long neglected claims had been passed during the preceding year, namely, "An Act for shortening the time of Prescription in certain cases," (2 & 3 Will. 4, c. 78); and "An Act for shortening the time required in claims of *modus decimandi*, or exemption from a discharge of tithes," (2 & 3 Will. 4, c. 100).

Act subjecting  
real estate to  
simple contract  
debts.

The act of 3 & 4 Will. 4, c. 104, making real estates assets for the payment of simple contract debts, was due to moral justice. The ready assent yielded by both houses of Parliament to this measure, stands singularly contrasted with the strenuous and persevering opposition encountered by Sir *Samuel Romilly*, during his well-known exertions to obtain such an enactment from the legislature of his day. The act of 47 Geo. 3, sess. 2, c. 74, which was the fruit of those exertions, was so limited in its operation\*, that it must have been regarded by its framer as a monument of failure rather than of success.

Whether the  
new Statute of  
Limitations af-  
fects a purchas-  
er's right to a  
sixty years'  
title.

Opinions seem to be divided on the point, whether the impending† Statute of Limitations will abridge the right of purchasers to a sixty years' title. Sir *Edward Sugden* considers that it will reduce the term of a marketable title to forty years, this being the period when, under the new act, an adverse possession will confer an indefeasible title. (*Vide* 2 Sugd. Vend. 9th ed. 330, n.) On the other hand, Mr. *Brodie* and Mr. *Hayes* contend that the existing rule will remain unchanged; (*Hayes's* Introd. Conv. App.

\* As this act was confined to persons engaged in trade, it obviously left untouched the great body of landed proprietors, many of whom, however, under the prevailing modes of settlement, are merely tenants *for life*.

† This statute does not come into full operation until June, 1835.



rents and profits of the said hereditaments in the meantime until the same shall be so sold, upon and for such trusts, in-

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162); because, having regard to the ease of a subsisting tenancy for life, (during which, as the possession is not adverse to, time does not begin to run against the remainder-man), an uninterrupted enjoyment for forty years does not, even under the new law, afford adequate security against eviction\*. Mr. *Brodie* observes, that it is a mistake to suppose that the present length of abstracts is with reference to the limitation of sixty years;—it is with reference to the duration of human life; and so long as the law will not allow a remainder-man expectant on an estate for life to be barred by a possession adverse to the tenant for life, a purchaser will be entitled to require a title to be shewn for the same period as heretofore under the old law. *Vide Hayes's Introd. Conv. App. 226.*

With this opinion the practice of the profession seems to accord; and Courts of Equity, or at least their officers, the Masters, continue to act upon the old rule, without any relaxation. One feels, however, some hesitation in acceding to the notion that the rule in question was established in reference exclusively to the duration of human life, without regard to the limitation of real actions; seeing the exact correspondence between the periods of title and limitation, and that the rule, if framed with a view to the claim of a remainder-man, falls short of its aim, as even an estate for life (to say nothing of an estate tail) may outlast the period of sixty years. The probability is, that, when it became necessary to establish the minimum extent† to which abstracts of title under all

\* Eviction may occur after a possession of much more extended duration than forty years under such circumstances as the following:—Lands are devised by will to A. by words which are considered to carry the inheritance. A. sells and conveys (as is supposed) the fee simple. For more than sixty years the property is enjoyed under this conveyance, A. being alive throughout this period; but, on his death at an advanced age, the purchaser in possession is roused from his dream of fancied security by an ejectment on the part of the testator's heir-at-law, who claims and recovers the property on the ground that A., according to the true construction of the will, was devisee for life only, which claim, being made within twenty years after A.'s decease, would be consistent with the recent no less than the old Statute of Limitations. Supposing the conveyance by the devisee not to disclose the infirmity of his title, it is quite possible that the evicted purchaser may have been coerced into the specific performance of the contract by the decree of a Court of equity, for, after sixty years' possession, a title, derived under such conveyance, would be clearly marketable.

Eviction possible  
after a possession  
of more than  
forty years.

† Sixty years may or may not be a sufficient root of title according to circumstances; but no circumstances can render a shorter title marketable. *Vide ante*, Vol. 7, p. 359 *et seq.*

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tents, and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations as are or

circumstances should reach\*, sixty years were fixed on as being the period when an adverse possession would confer an unimpeachable title, *with little or no regard to the case of a tenancy for life or a tenancy in tail, either of which would evidently have suggested the necessity of a more extended range of investigation.* Indeed, as an estate tail is of indefinite duration, no length of time could reach such a case; and therefore the recent statute has wisely included tenants in tail and ulterior remaindermen in the same bar. *Vide* stat. 3 & 4 Will. 4, c. 27, ss. 22 and 23.

But though a consideration of the possible existence of remainders may not have had so large a share as has been ascribed to it in the establishment of the present doctrine respecting titles, it may constitute a sufficient ground for adhering to it; for, if that doctrine has hitherto left a purchaser in too precarious a condition, now is the time to augment his security by refusing to contract the period of title, in analogy to the abridged remedy. Had the present rule afforded ample protection under the old Statutes of Limitations, it is obvious that the approaching alteration of the law would have warranted and required its modification; but the truth seems to be, that a purchaser's scope of inquiry ought never to have been limited to the mere period when an adverse possession could ripen into a rightful title, but should have extended *additionally* over such a period as would comprehend a life in being, or rather the period which the law allows for the suspension of the vesting of estates, because, *until the termination of such period, the possession may not have become adverse.* It seems, then, that the rule against perpetuities forms one of the strong holds of a purchaser's security; and as, under that rule, it may happen that a limited and terminable ownership may subsist for more than sixty years, (namely, for a life and twenty-one years†), it is impossible, without hazard of doing injustice, to pronounce a title of shorter duration than sixty years to be marketable. Still, however, it cannot be denied, that with such a title a purchaser will now be in a better situation than formerly, and hence, probably, there will be some abatement of that strictness of requisition in regard to evidence of title, which has prevailed of late years, and has driven vendors to the countervailing expedient of introducing stipulations restrictive of a purchaser's demands;—and it must be borne in mind that a purchaser not so restricted, may always compel the disclosure of every document of title, however ancient, in the vendor's possession. (*Vide ante*, Vol. 7, pp. 330 *et seq.*)

The importance of the point to which the preceding remarks refer, will probably be deemed an excuse for their introduction in this place.

\* On this point *vide ante*, Vol. 7, p. 353 *et seq.*

† *Vide post*, Vol. 10, p. 37.

shall be expressed, declared, and contained of or concerning the same respectively in and by an indenture already prepared and engrossed, and bearing or intended to bear even date with these presents, and made or intended to be made between the said [*intended husband*], of the first part; [*intended husband's father*], of &c., of the second part; the said [*intended wife*], of the third part; [*intended wife's father*], of &c., of the fourth part, and the said [*trustees*], of the fifth part. *Provided always*, and it is hereby agreed and declared, that the receipt or receipts in writing of the trustees or trustee for the time being of these presents, for any sum or sums of money to be payable to them or him under or by virtue of the trusts hereinbefore contained, shall be a sufficient and effectual discharge or sufficient and effectual discharges for the same, or for so much thereof respectively as in such receipt or receipts shall be expressed or acknowledged to be received; and that the person or persons to whom the same shall be given shall not afterwards be answerable or accountable for any loss, misapplication, or non-application, or be in anywise obliged or concerned to see to the application of the money therein mentioned and acknowledged to be received. *Provided also*, and it is hereby agreed and declared, that in the meantime and until the said — and premises shall be sold in pursuance of the trust or direction hereinbefore in that behalf contained, it shall be lawful for the said trustees or trustee (*power to lease as in former precedents*). **PROVIDED ALSO**, and it is hereby agreed and declared, that if the said trustees hereby appointed, or either of them, or any future trustee or trustees to be appointed as hereinafter is mentioned, shall die, or shall go to reside out of the United Kingdom, or shall be desirous to be discharged from or shall decline or become incapable to act in the trusts herein contained, before the same shall be fully executed or discharged, then and in such case, and so often as the same shall happen, it shall be lawful for the said [*intended husband*] and [*intended wife*], his intended wife, or the survivor of them, or the executors or administrators of such survivor, by any writing or writings sealed and delivered by them, him, or her, in the presence of and attested by two or more credible witnesses, to appoint any other person or persons to be a trustee or trustees in the place of the trustee or trustees so dying, residing abroad, desiring to be discharged

BARGAIN AND  
SALE IN FEE  
UPON TRUST  
FOR SALE.

Power to trustees to give discharges.

Power of leasing.

Power of appointing new trustees.

BARGAIN AND  
SALE IN FEE  
UPON TRUST  
FOR SALE.

Indemnities to  
trustees.

ed, or declining or becoming incapable to act as aforesaid; and that, upon every such appointment, all the said trust estate, monies, and premises shall be conveyed, assigned, and transferred, at the costs and charges of the said trust estate, in such manner and so as that the same may be vested in such new trustee or trustees, jointly with the continuing trustee or trustees, or solely, as the case may require, upon the trusts hereinbefore declared concerning the same, or such of them as shall be subsisting or capable of taking effect; And it is hereby agreed and declared, that all and every such new trustee or trustees shall and may have and exercise the same powers and authorities and discretion whatsoever to all intents, effects, constructions, and purposes whatsoever, as if he, she, or they had been originally by these presents appointed trustee or trustees, and as the trustee or trustees in or to whose place such new trustee or trustees shall respectively come or succeed could or might have done if then living and continuing to act in the aforesaid trusts. *Provided also*, and it is hereby further agreed and declared, that the trustees for the time being under or by virtue of these presents shall be charged and chargeable respectively only for such monies as they shall respectively actually receive; And any one or more of them shall not be answerable or accountable for the acts, receipts, neglects, or defaults of the other or others of them, or for any banker or other person with whom any part of the said trust monies shall be deposited or lodged for safe custody, or otherwise, or for the insufficiency or deficiency of any security or securities, or for any other involuntary misfortune, loss, or damage which may happen in the execution of the aforesaid trusts; And also, that it shall be lawful for the said trustees for the time being to retain to and reimburse themselves respectively all costs, charges, and expenses, which they or any of them shall or may sustain, disburse, or be put unto, in or about the execution of the aforesaid trusts, or in relation thereunto. (*Add covenants by intended wife (b) for the title, quiet enjoyment, freedom from incumbrances, and further assurance, extending to her own acts and the acts of her deceased uncle, the testator*). IN WITNESS, &c.

(b) But it is not *always* advisable to insert such covenants, because, in the event of breach, the husband is liable to be sued jointly with the wife during the coverture.



SETTLEMENT *on MARRIAGE, of STOCK in the FUNDS and MONEY to ARISE from the SALE of a Freehold ESTATE CONVEYED by Deed of EVEN DATE, (last Precedent), Upon the USUAL TRUSTS for the HUSBAND, WIFE, and CHILDREN, subject, as to part of the Trust Funds, to a GENERAL POWER of APPOINTMENT reserved to the Wife. COVENANT by the HUSBAND to leave a House (which had been furnished at the joint Expense of the respective Parents of the marrying Parties), DULY FURNISHED for his intended WIFE in the event of her surviving him. COVENANT by the INTENDED HUSBAND'S FATHER to LEAVE the Son a SHARE EQUAL to that of his OTHER CHILDREN.*

PROCEEDS OF  
SALE UNDER  
CONTEMPORA-  
NEOUS CON-  
VEYANCE, &c.

**T**HIS INDENTURE, made the — day of —, 18—,  
BETWEEN [*intended husband*], of &c., of the first part; [*in- Parties.*  
*tended husband's father*], of &c., of the second part; [*in-  
tended wife*], of &c., of the third part; [*intended wife's  
father*], of &c., of the fourth part; and [*three trustees*], of  
&c., of the fifth part: WHEREAS a marriage is intended Recital of in-  
shortly to be solemnized between the said [*intended hus- tended mar-  
band*] and the said [*intended wife*]: AND WHEREAS, on the riage.  
treaty for the said intended marriage, it was agreed that all — of agree-  
the furniture and household goods now in or about the mes- ment to settle.  
suage or dwelling-house, situate at —, in the occupation  
of the said [*intended husband*], (which furniture and house-  
hold goods have lately been purchased by the said [*intended  
husband's father*] and [*intended wife's father*], at their joint  
equal expense), should become the absolute property of the  
said [*intended husband*] immediately after the solemniza-  
tion of the said intended marriage; and that he the said  
[*intended husband*] should enter into the covenants herein-  
after contained to leave the said messuage or dwelling-house,  
or some other messuage or dwelling-house of equal size, at  
his decease, sufficiently and suitably furnished, for the abso-  
lute use and benefit of the said [*intended wife*], her execu-

PROCEEDS OF  
SALE UNDER  
CONTEMPORA-  
NEOUS CON-  
VEYANCE, &c.

— of bargain  
and sale inroll-  
ed.

tors, administrators, or assigns, in case she shall survive him the said [*intended husband*]; And on the said treaty it was also agreed, that the said [*intended wife*] should convey certain lands and hereditaments, situate at —, in the county of —, whereof she was tenant in tail in possession under the will of her uncle, [*name*], late of —, deceased, unto and to the use of the said [*three trustees*], their heirs and assigns, *Upon trust* to sell the same, and to stand possessed of the money arising from such sale, (after deducting thereout the expenses attending the same), upon the trusts and for the intents and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed concerning the same; And upon the said treaty it was also agreed, that the said [*intended wife's father*] should invest the sum of 2000*l.* sterling in the purchase of Three per centum Consolidated Annuities, in the names of the said [*three trustees*], upon the trusts and for the intents and purposes, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed concerning the same. AND WHEREAS, in pursuance of the said agreement in this behalf, by an indenture of bargain and sale, bearing even date with these presents, and made or expressed to be made between the said [*intended wife*] of the first part, the said [*intended husband*] of the second part, and the said [*three trustees*] of the third part, (and which indenture is intended to be inrolled in the High Court of Chancery forthwith, pursuant to the act of Parliament of the third and fourth year of the reign of his present Majesty, intituled “An Act for the Abolition of Fines and Recoveries, and for the substitution of more simple modes of Assurance,”) the said [*intended wife*], with the privity of the said [*intended husband*], hath conveyed the said lands and hereditaments at — aforesaid, with the appurtenances, unto and to the use of the said [*three trustees*], their heirs and assigns, in trust for the said [*intended wife*], her heirs and assigns, until the said intended marriage shall be solemnized; and after the solemnization thereof, *Upon trust* (with such consent or at such discretion as in the said indenture of bargain and sale is expressed) to sell and dispose of the same in manner therein mentioned; and by the said indenture it was agreed and declared, that the trustees or trustee for the time being thereof should stand possessed of and interested in the sum

and sums of money to arise or be produced by the sale or sales which should be made in pursuance of the same indenture, and also of and in the rents and profits of the said — hereditaments, in the meantime and until the same should be so sold, upon and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations as were or should be expressed, declared, and contained, of or concerning the same respectively, in and by an indenture therein mentioned to be then already prepared and engrossed, and to bear or intended to bear even date with the said indenture of bargain and sale, meaning thereby these presents. AND WHEREAS, in further pursuance of the said agreement in that behalf, the said [*intended wife's father*] hath this day invested the sum of 2000*l.* sterling in the purchase of the sum of 2187*l.* 10*s.*, Three Pounds per centum Consolidated Annuities, in the names of the said [*three trustees*], as they the said [*three trustees*] do hereby admit and acknowledge. NOW THIS INDENTURE WITNESSETH, that, in pursuance and performance of the said agreement in this behalf, and in consideration of the said intended marriage, each of them the said [*intended husband's father*] and [*intended wife's father*] doth hereby for himself, his heirs, executors, and administrators, covenant and declare with and to the said [*intended husband*], that, immediately from and after the solemnization of the said intended marriage, all and singular the said furniture and household goods which now are in and about the said messuage or dwelling-house situate at —, and being in the occupation of the said [*intended husband*] as aforesaid, shall become and be the absolute property of the said [*intended husband*], his executors, administrators, or assigns (a). AND THIS INDENTURE FURTHER

PROCEEDS OF  
SALE UNDER  
CONTEMPORA-  
NEOUS CON-  
VEYANCE, &c.

— that wife's  
father had trans-  
ferred stock.

*Testatum.*

Declaration that  
household fur-  
niture shall be  
the property of  
the husband.

Further *testa-  
tum.*

(a) Personal chattels pass by manual delivery, and, therefore, the present declaration is not essential to entitle the husband. It may be useful, however, as a formal recognition of the husband's title by the parties at whose expense the articles of furniture were purchased. This precedent exhibits a mode of securing household furniture for the use of a surviving wife, without tying up the specific articles of which the lease then consisted, which is inconvenient on account of the changes that gradually take place in such articles by the substitution of new for old furniture, &c. Such a covenant, of course, gives the covenantee no lien

Remarks on the  
covenant re-  
specting the fur-  
niture.

PROCEEDS OF  
SALE UNDER  
CONTEMPORA-  
NEOUS CON-  
VEYANCE, &c.

Covenant by  
husband to leave  
house properly  
furnished for  
the wife if she  
should survive.

WITNESSETH, that, in pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, the said [*intended husband*] doth for himself, his heirs, executors, and administrators, covenant with the said [*three trustees*], their executors and administrators, that, if the said intended marriage shall take effect, and he the said [*intended husband*] shall die in the lifetime of the said [*intended wife*], Then and in such case he the said [*intended husband*] shall and will leave at his decease the said messuage or dwelling-house at — aforesaid, and the offices and outbuildings thereto belonging, or some other messuage or dwelling-house of equal size or dimensions, and the offices and outbuildings thereto belonging, furnished in a sufficient and suitable manner, and that all the furniture and household goods whatsoever of the said [*intended husband*], so dying in the lifetime of the said [*intended wife*] as aforesaid, which, at the time of his decease, shall be in or about the same messuage or dwelling-house, and the offices and outbuildings thereto belonging, or in or about any other messuage or dwelling-house of equal size or dimensions, which shall happen to be in the occupation of the said [*intended husband*] at the time of his decease, if the same shall be sufficient to satisfy the terms of this present covenant; and, whether the same shall be sufficient or not, if the said [*intended wife*] shall think proper to accept the same in satisfaction of such covenant, shall, from and immediately after the decease of him the said [*intended husband*], become and be the absolute property of the said [*intended wife*], her executors, administrators, and assigns, freed and discharged from any claim and demand whatsoever of or by the executors or administrators of him the said [*intended husband*], or any other person or persons claiming under him. AND THIS

Further testa-  
tum.

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upon or title to any specific articles, her remedy being merely against the assets of the covenantor, so that the greater convenience attending the present plan is purchased at the sacrifice of some security to the covenantee. However, it would be possible, even in settling specific articles of furniture upon trust for several persons in succession, to authorize the persons in possession to supply the place of the old articles by new ones of equal value. The creation of partial interests in household furniture is less frequently found in settlements and wills now than formerly.



INDENTURE FURTHER WITNESSETH, that, in pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, it is hereby agreed and declared, between and by the parties to these presents, that the said [*three trustees*], their heirs, executors, administrators, and assigns respectively, or other the trustees or trustee for the time being of these presents, under or by virtue of the power in this behalf hereinafter contained, shall stand and be possessed of and interested in all and every the sums and sum of money to arise or be produced by the sale or sales which may be made of the said —, or lands, hereditaments, and premises comprised in the said indenture of even date herewith, or any part thereof, in pursuance of the trusts by the said indenture in that behalf declared, (after deducting the costs and expenses attending the said sale or sales, or otherwise to be incurred in the execution of the trusts of the said indenture), Upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed and declared of or concerning the same, that is to say, *Upon trust*, after the solemnization of the said intended marriage, (with the consent in writing of the said [*intended husband*] during his life (*b*), and, after his decease, with the like consent in writing of the said [*intended wife*], during her life, and after the decease of the survivor of them at the discretion of the trustees or trustee for the time being), to lay out and invest the clear or net sum or sums of money to arise or be produced by any such sale or sales as aforesaid,

PROCEEDS OF  
SALE UNDER  
CONTEMPORANEOUS  
CONVEYANCE, &c.

Declaration of trusts of monies arising from sale under trusts of contemporaneous conveyance.

Trust for investment of monies arising from sales.

(*b*) In general, trusts for the original investment of monies should be made exercisable with the consent of the person entitled to the immediate income, exclusively of the ulterior owner, whose refusal to concur in any investment might otherwise be greatly prejudicial to the former, though, of course, such contumacy would not leave the damnified party without remedy. This remark, however, does not apply to the transfer of trust monies from one productive security to another; for in such a transaction it seems reasonable that the persons taking the ulterior interest (being of competent age) should have a voice conjointly with the immediate *cestui que trust*, whose interest may incline him, in the choice of an investment, to pay more regard to the present productiveness than the ultimate safety of the fund.

Remark on the power of making and changing investments.

PROCEEDS OF  
SALE UNDER  
CONTEMPORA-  
NEOUS CON-  
VEYANCE, &c.

Power to vary  
securities.

Trusts for in-  
tended husband  
and wife succes-  
sively for life,  
and subject  
thereto,

when and as the same shall be received, from time to time, in the names or name of the said trustees or trustee, in any of the parliamentary stocks or public funds of Great Britain and Ireland, or at interest, on real securities in England or Wales; and from time to time (with the consent in writing of the said [*intended husband*] and [*intended wife*], or of the survivor of them, and, after the decease of such survivor, then at such discretion as aforesaid), to alter, vary, and transpose the same stocks, funds, and securities as the said trustees or trustee shall think fit; and lay out and invest the money to arise thereby in their or his names or name, in or upon any such funds or securities as are hereinbefore mentioned, and from time to time (with such consent or at such discretion as aforesaid) to vary and transpose the same as they or he shall think fit, and *Upon further trust* to stand and be possessed of and interested in all and singular the aforesaid trust monies and securities, and the interest, dividends, and annual produce thereof, upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, agreements, and declarations hereinafter expressed concerning the same, that is to say, *Upon trust*, that they the said trustees or trustee for the time being of these presents do and shall pay the interest, dividends, and annual produce of the said trust monies and securities to, or permit the same to be received by, the said [*intended husband*], or his assigns, during his life, and, after his decease, to and by the said [*intended wife*], or her assigns, during her life; and after the decease of the survivor of them the said [*intended husband*] and [*intended wife*], do and shall stand and be possessed of and interested in the said trust monies and securities, and the interest, dividends, and annual produce thereof, *In trust* for the child, or, if more than one, for all and every or such one or more exclusively of the others or other of the children (c)

Variation, ex-  
tending power  
of selection to  
more remote is-  
sue.

(c) If the power is to be extended to more remote issue, add,  
“or more remote issue of the said [*intended husband*] by the said [*intended wife*], (which more remote issue may be made objects of appointment either in the lifetime or after the decease of his, her, or their parent or ancestor, or respective parents or ancestors), with such provisions for his, her, or their respective maintenance,” &c. *ut supra*.

of the said [*intended husband*] by the said [*intended wife*], his intended wife, with such provisions for his, her, or their respective maintenance and education, and advancement at such age or time, or respective ages or times, and (if more than one) in such shares and with such restrictions and limitations over, for the benefit of the said children (*d*), or some or one of them, and in such manner, in all respects, as the said [*intended husband*] and [*intended wife*] shall, during their joint lives, by any deed or deeds, instrument or instruments in writing, with or without power of revocation and new appointment, to be by them sealed and delivered in the presence of and attested by one or more credible witness or witnesses, jointly appoint; and in default of such joint appointment, and so far as any such appointment shall not extend, then as the survivor of them the said [*intended husband*] and [*intended wife*] shall, by any deed or deeds, instrument or instruments in writing, with or without power of revocation and new appointment, to be by such survivor sealed and delivered in the presence of and attested by two or more credible witnesses, or by his or her last will and testament in writing, or any codicil or codicils thereto, to be signed and published in the presence of and attested by the like number of credible witnesses, from time to time appoint; but so, nevertheless, that no share in the capital of the said trust funds and securities shall be absolutely vested in any child (*d*) by any such appointment, until he, being a son (*e*), shall have attained the age of twenty-one years, or until she, being a daughter (*f*), shall have attained that age or been married; and in default of such appointment, and so far as such appointment shall not extend, *In trust* for all and every the children and child of the said [*intended husband*] by the said [*intended wife*] (*g*), who being a son or sons shall at-

PROCEEDS OF  
SALE UNDER  
CONTEMPORA-  
NEOUS CON-  
VEYANCE, &c.

In trust for the children as the husband and wife or the survivor shall appoint, and in default of appointment,

in trust for children equally.

(*d*) Or "issue."

(*e*) Or "male."

(*f*) Or "female."

(*g*) Here it will be observed, that the benefit of the trusts is confined to the children of the marriage, and it seems fair that it should be so, as each of the marrying parties may be considered as purchasing the contribution of the other for the benefit of their common offspring; but

As to letting in the children of a future marriage.

PROCEEDS OF  
SALE UNDER  
CONTEMPORA-  
NEOUS CON-  
VEYANCE, &c.

Hotchpot clause.

In default of  
children, in trust  
for the husband.

Until sale, rents  
to be paid to the  
persons entitled  
to income of  
trust funds.

tain the age of twenty-one years, or, being a daughter or daughters, shall attain that age or marry, to be divided between or among them, if more than one, in equal shares, and if there shall be but one such child, the whole In trust for such only child; but no child taking any part of the said trust monies or securities under any appointment to be made by the said [*intended husband*] and [*intended wife*], or the survivor of them, in exercise of the aforesaid powers herein in that behalf contained, or either of them, shall (unless such appointment shall so direct) have or be entitled to any share of the unappointed part of the same trust monies or securities, without bringing his or her appointed share or shares into hotchpot, and accounting for the same accordingly. (*Provision for maintenance and advancement as in former precedents*). And it is hereby agreed and declared, that if there shall be no child of the said [*intended husband*] by the said [*intended wife*], his intended wife, who being a son shall attain the age of twenty-one years, or, being a daughter, shall attain that age or marry, then and in such case the trustees or trustee for the time being of these presents shall, after the decease of the survivor of the said [*intended husband*] and [*intended wife*], and such default or failure of issue of the said intended marriage as aforesaid, stand and be possessed of and interested in the said trust monies and securities, and the interest, dividends, and annual produce thereof, or such part or parts thereof respectively, as shall not have become vested or been applied under any of the trusts or provisions aforesaid, In trust for the said [*intended husband*], his executors, administrators, or assigns, for his or their proper use and benefit. And it is hereby agreed and declared, that, in the meantime and until the said hereditaments comprised in the said indenture of bargain and sale of even date herewith shall be sold and disposed of in pursuance of the trusts therein contained, the trustees or trustee for the time being of these presents do and shall pay and apply the rents and profits thereof to the person or persons

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when the settled property comes wholly from one side, it obviously is not right to deny the children of a future marriage of the settlor a participation with those of the contemplated match, whose interests are often too exclusively regarded.



and in the manner to whom or in which the interest or annual produce of the money to arise from the sale thereof would for the time being be payable or applicable under the trusts hereinbefore declared in case such sale had then actually been made. AND THIS INDENTURE FURTHER WITNESSETH, that, in pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, it is hereby agreed and declared that the said [*trustees*], their executors or administrators, or other the trustees or trustee for the time being of these presents, shall stand and be possessed of and interested in the said sum of 2187*l.* 10*s.*, Three Pounds per centum Consolidated Annuities, so this day transferred by the said [*intended wife's father*] to the said [*trustees*], as hereinbefore is mentioned, In trust for the said [*intended wife's father*], his executors, administrators, or assigns, until the said intended marriage shall be solemnized; and after the solemnization thereof, upon and for the trusts and purposes, and subject to the powers, provisoes, agreements, and declarations herein-after expressed or referred to concerning the same, that is to say, *Upon trust* either to permit and suffer the said sum of 2187*l.* 10*s.*, Three Pounds per centum Consolidated Annuities, to remain in its actual state of investment, or at any time or times during the joint lives of the said [*intended husband*] and [*intended wife*], with their consent in writing, and after the decease of the said [*intended wife*], in case of her dying in the lifetime of the said [*intended husband*], with the consent in writing of the said [*intended husband*] during his life, and after the death of the said [*intended husband*] so surviving the said [*intended wife*] as aforesaid, at the discretion of the said trustees or trustee for the time being, to sell the said sum of 2187*l.* 10*s.*, Three Pounds per centum Consolidated Annuities, or any part thereof, and invest the money arising therefrom in their or his names or name, in any of the parliamentary stocks or public funds of Great Britain and Ireland, or at interest upon government or real securities in England or Wales, and from time to time (with such consent or at such discretion as last aforesaid) to vary and transpose the said funds and securities, as to the said trustees or trustee shall seem meet; and *Upon trust* to stand possessed of and interested in, as well the said sum of 2187*l.* 10*s.*,

PROCEEDS OF  
SALE UNDER  
CONTEMPORA-  
NEOUS CON-  
VEYANCE, &c.

Further testa-  
tum.

Declaration of  
trusts respecting  
3*l.* per cent. con-  
sols transferred  
to the trustees.

Power to vary  
securities.

PROCEEDS OF  
SALE UNDER  
CONTEMPORA-  
NEOUS CON-  
VEYANCE, &c.

General power  
of appointment  
reserved to the  
wife, and, sub-  
ject thereto,

Upon trust for  
her separate use  
during the joint  
lives of husband  
and wife.

In case the wife  
survives the  
husband, in trust  
for her abso-  
lutely.

But if the wife

Three Pounds per centum Consolidated Annuities, and the dividends and annual produce thereof, as any sum or sums of money produced by any sale of the said annuities, or any part or parts thereof, and the securities in or upon which the same shall for the time being be invested, and the interest, dividends, and annual produce thereof, upon such trusts, and for such intents and purposes, and subject to such powers, provisoes, agreements, and declarations as the said [*intended wife*] shall, from time to time, notwithstanding her said intended coverture, by any deed or deeds, instrument or instruments in writing, with or without power of revocation and new appointment, to be by her sealed and delivered in the presence of and attested by one or more credible witness or witnesses, or by her last will and testament in writing, or any codicil or codicils thereto, or any writing or writings in the nature of or purporting to be a will or codicil, to be signed and published by her in the presence of and attested by the like number of credible witnesses, appoint; and in default of and until such appointment, and so far as any such appointment shall not extend, *Upon trust* that the trustees or trustee for the time being of these presents do and shall, during the joint lives of the said [*intended husband*] and [*intended wife*], pay and apply the dividends, interest, and annual produce of all and singular the said last-mentioned trust monies and securities to such person or persons and for such purposes as the said [*intended wife*] shall from time to time, notwithstanding her coverture, by any writing or writings direct, or, in default of such direction, into her own hands for her separate use and benefit, without being subject to the debts, control, or engagements of the said [*intended husband*]; and the receipts of her the said [*intended wife*], or of her appointees, notwithstanding her coverture, to be from time to time sufficient discharges for the same; and if the said [*intended wife*] shall survive the said [*intended husband*], then and in such case, *Upon trust* that the said trustees or trustee do and shall, immediately after the decease of the said [*intended husband*], transfer or pay all the said last-mentioned trust monies and securities unto her the said [*intended wife*], her executors, administrators, or assigns, for her and their proper use and benefit; But if the said [*intended wife*] shall die in the lifetime of the

said [*intended husband*], then and in such case, Upon trust that the said trustees or trustee do and shall, from time to time, after the decease of the said [*intended wife*], so dying in the lifetime of the said [*intended husband*] as aforesaid, stand possessed of and interested in the said trust monies and securities, and the dividends, interest, and annual produce thereof, upon such of the trusts and for such of the intents and purposes, and subject to such of the powers, provisions, agreements, and declarations hereinbefore expressed and declared concerning the sum or sums of money to be produced by the sale or sales of the said hereditaments comprised in the said indenture of even date herewith, and the funds or securities in or upon which the same shall be invested, and the interest, dividends, and annual produce thereof, as shall or may be then subsisting or capable of taking effect. (*Power to trustees to give discharges to persons paying trust monies, and other discretionary powers, as in former precedents; also power of appointing new trustees (h); and the usual indemnity clauses.*) AND WHEREAS the said [*intended husband's father*] is seised of or entitled to real estates of inheritance of considerable value; and is also possessed of a large personal estate; and on the treaty for the said marriage it was agreed, that, by way of making a further provision for his son, the said [*intended husband*], and the other objects of the trusts hereinbefore referred to, the said [*intended husband's father*] should enter into the covenant hereinafter contained concerning the disposition of his real and personal estates. NOW THIS INDENTURE FURTHER WITNESSETH, that, in pursuance of the last-mentioned agreement, and in consideration of the said intended marriage, the said [*intended husband's father*], for himself, his heirs, executors, and administrators, doth covenant with the said [*trustees*], their executors, administrators, and assigns, that, in case the said intended marriage shall take effect, the said [*intended husband's father*] shall and will, by his last will and testament, effectually give, devise, and bequeath, or the heirs, executors, and administrators of him the said [*intended husband's father*] shall, at

PROCEEDS OF  
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dies in the husband's lifetime, then upon the trusts before declared concerning produce of sale of real estate.

Agreement respecting property of intended husband's father.

Further testament.

Covenant by intended husband's father to leave his son a share equal to that of any other child.

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(h) Of course, the power of appointing new trustees will exactly correspond with the power in the contemporaneous conveyance, (*ante*, p. 419)

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their own costs and charges, at or before the expiration of three calendar months after his decease, duly and effectually convey, assign, and assure such part of the real and personal estate of or to which he shall be seised, possessed, or entitled at the time of such his decease, as shall be equal at least to the share which any other child of him the said [*intended husband's father*], or the issue of any such child, or which any other such child and his or her issue conjointly, shall have or be entitled to, or shall have had or been entitled to, by gift, devise, bequest, descent, intestacy, or otherwise, of or in such estate or effects, unto and to the use of the trustees or trustee for the time being of these presents, to the intent that they or he may stand seised or possessed thereof and interested therein, upon and for the several trusts, intents, and purposes, and with and under and subject to the several powers, provisoes, and agreements in these presents, or the indenture of bargain and sale of even date herewith, declared and contained concerning the hereditaments thereby bargained and sold, or the produce thereof, according to the nature and quality of the said real and personal estate and effects respectively, or such of the same trusts, intents, and purposes, powers, provisoes, and agreements, as shall then be subsisting or capable of taking effect (i). *Provided always*, and it is hereby agreed and de-

Gifts to the ex-

Remark upon the covenant to leave husband an equal share with the covenantor's other children.

(i) Covenants of this nature have given rise to several questions (*vide ante*, p. 113), such as whether they extend to gifts to children in the lifetime of the covenantor, and also whether they apply exclusively to children who survive him; points, therefore, to which the draftsman's attention should be directed. In a late case, a difficulty arose from a supposed discrepancy between the recital, professing to describe the nature and object of the covenant, and the covenant itself. The intention was recited to be, that the wife's father should covenant that his daughter should take an equal share with his other children in his real and personal estate *after payment of debts, funeral, and testamentary expenses*; but in the operative part of the covenant no mention was made of the debts and expenses. Sir J. Leach, M. R., observed, that the recital was a key to the construction of the covenant, with which he conceived it was not inconsistent; and his Honor held that the covenantee could not claim any thing until after payment of debts. Another point decided was, that a contingent *post-obit* covenant in a former marriage settlement of the covenantor should rank as a "debt." *Bailey v. Lloyd*, 5 Russ. 330.



clared, that all and every sum and sums of money, or other estate and effects whatsoever, which shall or may at any time or times hereafter be paid or advanced, conveyed or assigned, by him the said [*intended husband's father*], unto or for the benefit of any of his children, or the issue of any such children, exceeding in amount or value at any one time the sum of 50*l.* each, or at several times within the space of any one year the sum of 100*l.*, shall be deemed and considered as part of the portion or share, or respective portions or shares, of the child or children or issue respectively to whom or for whose benefit the same shall have been advanced or paid, conveyed or assigned as aforesaid, and be brought into hotchpot and accounted for accordingly; nevertheless, it is expressly declared that all and every sum and sums of money, which shall or may be advanced by the said [*intended husband's father*] for the maintenance and education of any child or children or issue respectively, or for the apprenticing him, her, or them to any trade, profession, or business (*k*), or any property and effects which the said children or issue or any of them shall derive by, from, or under any person or persons other than the said [*intended husband's father*], or by or through any power of selection or distribution exercised by him the said [*intended husband's father*], shall not be deemed and considered as part of the share or portion, or respective shares or portions, of such child, children, or issue respectively, within the true intent and meaning of the covenant lastly hereinbefore mentioned. *Provided nevertheless*, and it is hereby agreed and declared, that, if under or by virtue of the covenant hereinbefore contained, any undivided part or share in freehold, copyhold, or leasehold messuages, lands, or other hereditaments shall be conveyed or assured to or vested in the trustees or trustee for the time being of these presents, it shall be lawful for the said trustees or trus-

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tent of 50*l.* at  
one time to be  
deemed ad-  
vancements.

Power to join in  
partition in case  
an undivided  
share is vested  
in the trustees.

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(*k*) This agrees with the rule with respect to advancements under the hotchpot clause in the Statute of Distributions. (*Vide post*, Vol. 10, p. 226.) Some of the questions which covenants of this nature are calculated to produce are excluded by the clauses in the text, but it is too much to expect that all have been comprehended. The insertion of such covenants is not to be recommended.

Remarks upon  
the advance-  
ment clause.

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tee at any time or times thereafter, with the consent in writing of the said [*intended husband*] and [*intended wife*], or the survivor of them, and, after the decease of such survivor, then in the discretion of the said trustees or trustee, to join and concur with the owner or owners of the other undivided share or shares thereof, or the person or persons empowered in respect thereof to join in a partition of the entirety, in making an effectual partition of the said messuages, lands, or hereditaments, and also to give or pay any sum or sums of money by way of equality of partition, and to execute such conveyances and assurances as shall be requisite and proper for the purpose of carrying such partition or partitions into full and complete effect; And it is hereby further agreed and declared, that the hereditaments which shall or may be allotted to the said trustees or trustee in severalty, on any and every such partition, shall be subject to the trusts affecting the undivided share or shares in lieu or in respect whereof the same shall have been so allotted; and all and every the sum and sums of money which shall be paid to such trustees or trustee for equality of partition as aforesaid shall be held by them or him upon the trusts hereinbefore declared concerning the monies to arise from the real estate conveyed to the said trustees or trustee by the hereinbefore recited indenture of bargain and sale of even date herewith, or such of them as shall be then subsisting or capable of taking effect; And the said trustees or trustee for the time being are and is hereby empowered to give effectual discharges for any monies which shall be paid to them or him by virtue of this present provision, exonerating the person or persons paying the same from all responsibility in respect of the application thereof. IN WITNESS, &c.

SETTLEMENT (*in Consideration of intended Wife's Portion, which is partly paid down and partly secured*) by LEASE and RELEASE (a), inrolled under Stat. 3 & 4 Will. 4, c. 74, by TENANT for LIFE (*the Protector*), and his eldest SON, TENANT IN TAIL IN REMAINDER, on the MARRIAGE of the Son, limiting the Property, PART to the FATHER for LIFE, and, subject thereto, the WHOLE to the INTENDED HUSBAND for

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(a) In the precedent in the text the estate tail is destroyed and the lands are resettled by the same assurance; a plan which is convenient, where numerous transactions are likely to take place under the power of sale and exchange, as the inrolment of the settlement precludes the necessity of furnishing the purchasers and exchangers with covenants to produce it. In general, however, it seems advisable to bar the entail *by a previous conveyance*, since the inrolment of a deed containing the numerous provisions ordinarily introduced into marriage settlements would be expensive, and the exposure thus occasioned of the contents of the settlement would sometimes be deemed objectionable. Indeed, both these advantages may be rendered compatible by the scheme illustrated in a former precedent, (*ante* p. 367), of vesting the property in trustees for sale by the disentailing conveyance, in which it is declared that the trustees stand possessed of the purchase upon the trusts declared by another deed of even date, which of course need not be inrolled. The disentailing conveyance contains the usual clause discharging purchasers from seeing to the application of the purchase-money, and also a power of appointing new trustees, which preclude the necessity of the purchasers having recourse to the contemporaneous deed under any circumstances.

Expediency of  
destroying the  
entail by a pre-  
vious assurance.

It is observable that the Stamp Act imposes a duty of 5*l.* in addition to the progressive duty, on bargains and sales inrolled of any estate of freehold in hereditaments in England, upon any other occasion than the mortgage or sale thereof. It is not quite clear that this duty would attach to any conveyance not taking effect as a bargain and sale properly so called; but it is advisable to avoid the question by stamping every disentailing assurance, in whatever form made, on any other occasion than that of a sale or mortgage, with a 5*l.* stamp.

Stamp applica-  
ble to the prece-  
dent in the text.

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LIFE, CHARGED *with an Annual Sum by way of PIN-MONEY for the WIFE; with remainder, subject to a JOINTURE RENT-CHARGE to THE WIFE, to the FIRST and OTHER SONS of the INTENDED MARRIAGE and of any FUTURE MARRIAGE of the HUSBAND, SUCCESSIVELY IN TAIL MALE, WITH REMAINDER TO THE SAME OBJECTS IN TAIL GENERAL. TRUSTS for raising PORTIONS for YOUNGER CHILDREN, including the Children as well of the INTENDED as of any FUTURE MARRIAGE of the Husband. CLAUSE specially SUBJECTING the FATHER'S Life ESTATE to a PROPORTION of the CHARGE of PORTIONS for YOUNGER CHILDREN. POWER to INTENDED HUSBAND to JOINTURE any FUTURE WIFE. Special POWERS of LEASING by Indenture or Copy of Court Roll for LIVES, and also for YEARS. Power to SELL and EXCHANGE LANDS and ENFRANCHISE COPYHOLDS. MONIES arising from SALES, EXCHANGES, and ENFRANCHISEMENTS to be laid out in the PURCHASE of LANDS, and in the meantime invested upon SECURITIES. APPOINTMENT of PROTECTOR under the Stat. 3 & 4 Will. 4, c. 74, and Power to supply Vacancies in the Office. Settlement of LEASEHOLDS for LIVES and YEARS (which are conveyed and assigned by separate Deeds), upon TRUSTS CORRESPONDING with the LIMITATIONS of the FREEHOLDS. COVENANTS for TITLE by the FATHER and SON, according to their RESPECTIVE ESTATES. (SPECIAL POWER of LEASING, with COVENANT for PERPETUAL RENEWAL.)*

Parties.

**THIS** INDENTURE, made the — day of —, 18—, BETWEEN [*father of intended husband*], of &c., of the first part; [*intended husband*], of &c., eldest son and heir apparent of the said [*father of intended husband*] by [*name*] his late wife, deceased, of the second part; [*father of intended wife*], of &c., esquire, and [*intended wife*], of the same place, spinster, daughter of the said [*father*], an infant of the age of — years and upwards, of the third part; [*trustees to*



*preserve contingent remainders*], of &c., of the fourth part ; and [*trustees of terms*], of &c., of the fifth part. WHEREAS a marriage is intended shortly to be solemnized between the said [*intended husband*] and [*intended wife*], with the consent of the said [*father of intended wife*], her father. AND WHEREAS, under and by virtue of certain indentures of lease and release, bearing date respectively the — and — days of —, in the year of our Lord —, the release being of five parts, and made or expressed to be made between the said [*father of intended husband*], of the first part, [*describe the other parties*], being the settlement made previously to and in consideration of the marriage then intended, and which was soon after solemnized between the said [*father of intended husband*] and [*mother of intended husband*], all and singular the manors and other hereditaments hereinafter released were settled and limited *To the use* of the said [*father of intended husband*] and his assigns for his life, without impeachment of waste, with remainder subject to a yearly rent-charge by way of jointure to the said [*mother of intended husband*], which determined at her decease, and to a limitation for a term of years for securing the same, which thereupon also ceased ; *To the use* of the said [*trustees of recited settlement*], and the survivors and survivor of them, and the executors and administrators of such survivors or survivor, for the term of five hundred years, for raising the sum of 20,000*l.* for the portions of the three younger children of the said [*father of intended husband*] by his said late wife [*name*], deceased, which is not to be paid till after the death of the said [*father of intended husband*], unless he should direct the same to be raised and paid in his lifetime ; with remainder, from and after the determination of the said term, and in the meantime subject thereto, *To the use* of the first son of the said [*father of intended husband*] on the body of the said [*name*], his said late wife, deceased, lawfully to be begotten, and the heirs male of the body of such first son, with such remainders over as in the said indenture are expressed. AND WHEREAS the said [*intended husband*] is the first son of the said [*father of intended husband*] by the said [*wife*], his late wife, deceased. AND WHEREAS the said [*father of intended husband*] is entitled to the estates

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Recital of intended marriage and anterior settlement of the property.

That intended husband was the first son of the marriage.

Leaseholds for lives.

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Intended wife's  
portion 10,000*l.*,  
5000*l.* to be paid  
down to the hus-  
band, and 5000*l.*  
secured by bond  
payable at her  
father's death.

Bond of even  
date recited.

Agreement to  
settle estates.

*Testatum.*

In consideration  
of the marriage  
and of the lady's  
marriage por-  
tion, the intend-  
ed husband and  
his father, and  
with the consent  
of the latter as  
protector, re-  
spectively  
convey.

holden by leases for lives and years respectively hereinafter described. AND WHEREAS upon the treaty for the said intended marriage, the said [*father of intended wife*] did propose and agree to give and advance for the marriage portion of the said [*intended wife*], his daughter, the sum of 10,000*l.*, whereof 5000*l.* was to be paid to the said [*intended husband*] at the time of or immediately before the solemnization of the said intended marriage, and the like sum of 5000*l.*, the residue thereof, was to be paid to the said [*intended husband*], his executors, administrators, or assigns, at the expiration of twelve calendar months after the decease of him the said [*father of intended wife*]; And accordingly he the said [*father of intended wife*] hath, by his bond, bearing even date with these presents, in the penal sum of 10,000*l.*, secured to the said [*intended husband*], his executors, administrators, or assigns, the payment of the said last-mentioned sum of 5000*l.*, at the expiration of twelve calendar months next after the death of him the said [*father of intended wife*]. AND WHEREAS, in consideration of the said intended marriage, and of the said portion or fortune of the said [*intended wife*], so to be paid and secured to the said [*intended husband*] as aforesaid, they the said [*father of intended husband*] and [*intended husband*] have agreed to convey (subject to the residue of the said term of five hundred years and the trusts thereof) the said manors and other hereditaments hereby released, to and upon the uses and trusts, and subject to the powers, provisoes, declarations, and agreements hereinafter expressed concerning the same; and the said [*father of intended husband*] hath also agreed that such settlement shall be made of the said leasehold premises as is herein contained. NOW THIS INDENTURE WITNESSETH, that, in consideration of the said intended marriage, and also in consideration of the said sum of 5000*l.* of lawful money of Great Britain and Ireland, paid by the said [*father of intended wife*] to the said [*intended husband*] at or before the execution of these presents, (being the portion or fortune of the said [*intended wife*], which was agreed to be paid down or advanced upon or immediately before the solemnization of the said intended marriage as aforesaid,) the receipt of which said sum of 5000*l.* the said

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[*intended husband*] doth hereby acknowledge, and therefrom doth acquit, release, and discharge the said [*father of intended wife*], his heirs, executors, administrators, and assigns, for ever, by these presents; and also, in consideration of the sum of 5000*l.* having been secured by the said [*father of intended wife*], to be paid at twelve calendar months after his death to the said [*intended husband*], his executors, administrators, or assigns as aforesaid, and for making a provision as well for the separate use of the said [*intended wife*] during the joint lives of her and the said [*intended husband*], in case the said intended marriage shall take effect, as also for her support and maintenance during her life by way of jointure after the death of the said [*intended husband*], in case she shall happen to survive him, and for making such provision as is hereinafter expressed for the children of the said intended marriage, and other the objects of the several limitations and trusts hereinafter contained; and also, in order to defeat and destroy all estates tail of the said [*intended husband*] in the said manors and other hereditaments hereby released, and all estates, rights, titles, interests, and powers to take effect after the determination or in defeazance of such estates tail, and in order to assure and limit the inheritance in fee simple in possession in the same hereditaments to the several uses, upon the several trusts, and to and for the intents and purposes, and subject to the powers, provisoes, and declarations hereinafter expressed concerning the same; and in consideration of 10*s.* a-piece, at the same time paid by the said [*trustees to preserve*] to the said [*father of intended husband*] and [*intended husband*], the receipt &c., the said [*father of intended husband*], and also the [*intended husband*], with the consent and approbation of the said [*father of intended husband*], as the protector of the settlement made by the hereinbefore recited indentures of lease and release, testified by his executing these presents, *Do*, and each of them. *Doth*, by these presents (*b*), grant, bargain, sell, re-

(*b*) It seems highly probable that the Courts would hold that a conveyance to uses by tenant in tail, by a deed inrolled under the stat. 3 & 4 Will. 4, c. 74, preceded by a lease for a year, would take effect as a release at common law, and not as a bargain and sale of a use, since the

As to expressly negating deed taking effect as a bargain and sale.

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*Habendum.*

lease, and confirm unto the said [*trustees to preserve*], and their heirs, (in the actual possession, &c.), ALL THAT [*parcels and general words*], TO HAVE AND TO HOLD the said manors, messuages, farms, lands, tenements, rectories, advowsons, tithes, and all and singular other the hereditaments hereinbefore expressed to be hereby granted and released, with their appurtenances, (subject, nevertheless, to the residue of the aforesaid term of five hundred years and the trusts thereof), unto the said [*trustees to preserve*], and their heirs, for ever, (freed and absolutely discharged of and from the said estate tail created therein as aforesaid, and all estates, rights, titles, interests, and powers, to take effect after the determination or in defeazance thereof), To the uses, upon the trusts, and for the intents and purposes hereinafter expressed and contained concerning the same, that is to say, until the said intended marriage shall be had and solemnized, TO THE USE of the said [*father of intended husband*], and his assigns, for and during the term of his natural life, with-

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effect of construing it to operate as a bargain and sale would be to vest the legal inheritance in the grantee, and reduce the whole series of limitations in favour of the intended *cestuis que use* to mere equitable limitations. If there was the slightest reason to apprehend that the instrument would be so construed, it would be proper to negative the construction by the insertion in this place of the words—"which are intended to operate and take effect as a release at common law, and not as a bargain and sale of a use." Supposing, however, the deed, for any reason, to be incapable of operating as a release, it is probable that these words would have the effect of preventing its being construed as a bargain and sale; for though there is no doubt that a deed formerly intended to take effect as a release would, if ineffectual, as such operate as a bargain and sale, yet the Courts would scarcely so construe it, even on such an emergency, in spite of an express intimation of a contrary intention. The deed would thus be deprived of all efficiency. This danger, however, might be guarded against by the following qualifying appendage to the suggested clause in question:—"unless the same shall be incapable of taking effect otherwise than as such bargain and sale." Perhaps, however, the practitioner will not deem it necessary to negative the construing the instrument to be a bargain and sale, if capable of operating in any other manner, opposed as it is to every sound principle of construction.



out impeachment of or for any manner of waste; and from and immediately after the decease of the said [*father of intended husband*] To THE USE of the said [*intended husband*], his heirs and assigns, for ever (c); and from and immediately after the solemnization of the said intended marriage, To THE SEVERAL USES, upon the trusts, and for the intents and purposes, and subject to the powers, provisoes, declarations, and agreements hereinafter expressed concerning the same respectively, that is to say, *As to, for, and concerning* such and so many of the said manors, messuages, farms, lands, tenements, rectories, advowsons, tithes, and hereditaments hereby released, as are situate or arising within the said counties of York and Lincoln respectively, To THE USE of the said [*trustees of terms*], their executors, administrators, and assigns, for and during the term of ninety-nine years, to commence and be computed from the solemnization of the said intended marriage, and to be from thence next ensuing and fully to be ended, without impeachment of or for any manner of waste, Upon the trusts and for the intents and purposes, and subject to the provisoes, declarations, and agreements hereinafter expressed concerning the same; And after the expiration or other determination of the said term of ninety-nine years, and in the mean time subject thereto and to the trusts thereof, To THE USE of the said [*father of intended husband*], and his assigns, for and during the term of his natural life, without impeachment of or for any manner of waste; and from and after the death of the said [*father of intended husband*], as to, for, and concerning so many and such of the said hereditaments, as are situate or arising within the said counties of York and Lincoln, and from and immediately after the said intended marriage, as to, for, and concerning so many and such of the said hereditaments hereby released as are situate or arising within the said county of Sussex, To THE USE of the said [*trustees of terms*], their executors, administrators, and assigns, for and during the term of one hundred years, to commence and be computed as to the said premises in the county of Sussex from the

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As to part.

To the use of  
trustees for  
ninety-nine  
years.

After the deter-  
mination of the  
term,

To the use of  
father of intend-  
ed husband for  
life, subject  
thereto, as to  
the whole of the  
hereditaments,

To the use of  
trustees for a  
term to raise  
pin-money, and  
subject thereto,

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(c) In this case, the first limitation should not be to the existing uses in the ordinary manner until the marriage, unless it is intended, that, if the marriage does not take place, the entail shall continue.

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To the use of  
intended hus-  
band for life,  
with remainder

To the use of  
trustees to pre-  
serve, with re-  
mainder

solemnization of the said intended marriage, and as to the said premises in the counties of York and Lincoln, from the death of the said [*father of intended husband*], from such respective periods of commencement next ensuing and fully to be ended, without impeachment of or for any manner of waste; but nevertheless *Upon trust (to raise pin-money, as in former precedents, with a direction to permit the persons in remainder to receive the residue of the rents, and declaration that no more than two years' arrear of pin-money shall be raised; and proviso for cesser of term, ut ante, pp. 216, 217);* And (d) after the end or sooner determination of the said term of one hundred years, and subject thereto and to the trusts thereof, To THE USE of the said [*intended husband*], and his assigns, for and during the term of his natural life, without impeachment of or for any manner of waste; and after the determination of that estate by forfeiture or otherwise in his lifetime, To THE USE of the said [*trustees to preserve*], and their heirs, during the life of the said [*intended husband*], *Upon trust* to preserve the contingent uses and estates hereinafter limited from being defeated and destroyed, and for that purpose to make entries or bring actions as occasion shall require; but nevertheless to permit the said [*intended husband*], or his assigns, during his life,

(d) Sometimes the husband covenants to pay the pin-money thus:—

Variation, cove-  
nant by the hus-  
band to pay pin-  
money.

“ And the said [*intended husband*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*trustees of terms*], their executors, administrators, and assigns, that, if the said intended marriage shall take effect, he the said [*intended husband*] shall and will, during the joint lives of him and the said [*intended wife*], pay or cause to be paid into the proper hands of her the said [*intended wife*], or unto such person or persons as she shall so direct or appoint as aforesaid, for her sole and separate use, the said yearly sum of £—, by even quarterly payments, on or at the days or times hereinbefore appointed for payment thereof, according to the true intent and meaning of these presents; And as to, for, and concerning the said manors and other hereditaments hereby released or intended so to be after the end or sooner determination,” &c. *ut supra*.

to receive the rents and profits of the same manors and other hereditaments for his or their own use and benefit; and from and after the decease of the said [*intended husband*], To THE USE, INTENT, AND PURPOSE that the said [*intended wife*], or her assigns, in case she shall happen to survive the said [*intended husband*], her intended husband, (but subject and without prejudice to the uses hereinbefore limited), shall and may yearly, and every year during the term of her natural life, have and receive out of the rents and profits of the said manors and other hereditaments hereby released, one yearly rent-charge of 1000*l.* of lawful money of Great Britain and Ireland, free from all present and future taxes, charges, and deductions whatsoever; and the said yearly rent-charge to be paid and payable quarterly to her the said [*intended wife*], and her assigns, at or in the common dining hall of Lincoln's Inn, in the county of Middlesex, by equal portions quarterly, at or upon the four most usual days of payment in the year, (that is to say), the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December, in every year, between the hours of one and two of the clock in the afternoon of each of the said days, the first payment thereof to be made on such of the said days as shall first happen next after the decease of the said [*intended husband*]. AND TO THIS FURTHER USE, INTENT, AND PURPOSE, (*powers of distress and entry, ut ante, p. 220*). And as to, for, and concerning all and singular the said manors and other hereditaments hereby released, subject to the said yearly rent charge of 1000*l.*, and to the powers and remedies hereinbefore given for the recovery thereof, from and immediately after the determination of the uses and estates thereof respectively hereinbefore limited, as and when they shall respectively end and determine, To THE USE of the said [*trustees of terms*], their executors, administrators, and assigns, for the term of six hundred years thence next ensuing and fully to be ended, without impeachment of or for any manner of waste, upon the trusts and subject to the provisos, conditions, and agreements hereinafter expressed concerning the same; And after the expiration or sooner determination of the said term of six hundred years, and in the meantime subject thereto and to the trusts thereof, and charged and chargeable as aforesaid, To THE USE of the first

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To the intent  
that the wife  
shall receive a  
jointure rent-  
charge;

and, subject to  
the jointure,  
To trustees for  
six hundred  
years upon the  
trusts after de-  
clared.

Subject thereto,  
to the first and  
other sons of  
the marriage in  
tail male, with  
remainder

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To the first and  
other sons of  
the husband by  
any other wife  
in tail male,  
with remainder

To first and  
other sons of the  
intended mar-  
riage in tail  
general, with  
remainder

To the first and  
other sons of  
the husband by  
any other wife  
in tail general,  
with remainder  
to the father of  
intended hus-  
band in fee.

Trusts of the  
term of ninety-  
nine years, in  
case of son's  
death in father's  
lifetime, to raise  
a proportion of  
maintenance  
of younger chil-  
dren out of the  
estate settled on  
the father.

and every other son of the said [*intended husband*] by his said intended wife successively, as they shall be in priority of birth, and of the respective heirs male of the body of every such son, the elder of such sons and the heirs male of his body being always to be preferred to the younger of such sons and the heirs male of his and their body and respective bodies; and for default of such issue, To THE USE of the first and every other son of the said [*intended husband*] by any wife or wives with whom the said [*intended husband*] may happen to intermarry after the determination of the said intended coverture, successively, as they and every of them shall be in priority of birth, and of the heirs male of the body of every such son, the elder of such sons and the heirs male of his body being always to be preferred to the younger of such sons and the heirs male of his and their body and respective bodies; and for default of such issue, To THE USE of the first and every other son of the said [*intended husband*] by his said intended wife, successively, as they shall respectively be in priority of birth, and the respective heirs of the body of every such son, the elder of such sons and the heirs of his body being always to be preferred to the younger of such sons and the heirs of his and their body and respective bodies; and in default of such issue, To THE USE of the first and every other son of the said [*intended husband*] by any wife or wives with whom he the said [*intended husband*] may happen to intermarry after the determination of the said intended coverture, successively, as they respectively shall be in priority of birth, and the respective heirs of the body of every such son, the elder of such sons and the heirs male of his body being always to be preferred to the younger of such sons and the heirs of his and their body and respective bodies; and in default of such issue, To THE USE of the said [*father of intended husband*], his heirs and assigns, for ever; *And as to, for, and concerning* the said term of ninety-nine years hereinbefore limited to the said [*trustees of terms*], their executors, administrators, and assigns, as aforesaid, It is hereby declared and agreed, that the same is so as aforesaid limited to them, upon the trusts and subject to the provisos hereinafter expressed concerning the same, that is to say, *Upon trust* that if the said [*intended husband*] shall die in the lifetime of the said [*father of intended husband*], leaving issue by the said [*intended wife*],



or any future wife or wives of him the said [*intended husband*], an eldest or only son, and also one or more other child or children who shall be presumptively entitled to a portion or portions under the trusts hereinafter declared, then and in such case that they the said [*trustees of terms*], or the survivor of them, his executors or administrators, do and shall, after the death of the said [*intended husband*], from time to time, during the life of the said [*father of intended husband*], by and out of the annual rents and profits of the premises comprised in the said term of ninety-nine years, being such of the premises hereby granted and released as are situate in the counties of York and Lincoln, or by demising or mortgaging the same, or any part thereof, for all or any part of the said term, raise and borrow, or take up at interest, so much money as shall be sufficient from time to time, during the life of the said [*father of intended husband*], to answer and satisfy so much and such part and parts of the annual sum or sums hereinafter provided and directed to be raised by way of maintenance or interest for or in respect of the said expectant portion or portions of such child or children (other than and except an eldest or only son), as shall bear such and the like proportion to the whole of the said annual sum or sums, as the clear yearly income of the said premises comprised in the said term of ninety-nine years shall from time to time bear to the clear yearly income for the time being of the whole of the premises hereby released; and do and shall pay and apply the same monies from time to time accordingly in ease and exoneration of such of the premises hereby released as are situate in the said county of Sussex; it being the intent and meaning of the said parties hereto, and particularly of the said [*father of intended husband*] and [*intended husband*], that the premises in the county of Sussex shall not, during the life of the said [*father of intended husband*], bear or contribute more than a due proportion (to be estimated and ascertained as aforesaid) of such maintenance and interest; and do and shall permit and suffer the person or persons entitled to the reversion or freehold of the premises comprised in the said term of ninety-nine years, expectant on the determination thereof, to receive and take the residue of the rents and profits of the same premises over and above what shall be necessary to be applied for

BY TENANT  
FOR LIFE AND  
REMAINDER-  
MAN IN TAIL.

Residue of the  
rents in trust  
for those in  
remainder.

BY TENANT  
FOR LIFE AND  
REMAINDER-  
MAN IN TAIL.

Proviso for ces-  
ser.

Trusts of the  
term of 600  
years.

For the better  
securing the  
jointure;

and for raising  
portions for  
younger chil-  
dren.

satisfying the trusts hereby declared of the said term. (*Proviso for cesser, ut ante, p. 256*). *And as to, for, and concerning* the said term of six hundred years hereinbefore limited to the said [*trustees of terms*], their executors, administrators, and assigns, as aforesaid, it is hereby agreed and declared, that the same is so limited to them upon the trusts and subject to the provisos, declarations, and agreements hereinafter expressed concerning the same, that is to say, *Upon trust* that if the said yearly rent-charge or sum of 1000*l.* shall be unpaid by the space of forty days next after any or either of the said days of payment whereon the same is appointed to be paid as aforesaid, being first lawfully demanded, then and so often (but subject and without prejudice to the life estate of the said [*father of intended husband*] in such of the premises comprised in the said term as are situate or arising in the said counties of York and Lincoln respectively,) it shall be lawful for the said [*trustees of terms*], and the survivor of them, his executors or administrators, from time to time, by and out of the rents and profits of the said manors and other hereditaments comprised in the said term of six hundred years, or by demising, leasing, or mortgaging the same, or any part thereof, for all or any part of the said term, or by such other ways and means as to them respectively shall seem expedient, to raise such sum and sums of money as shall be sufficient from time to time to pay and satisfy the said yearly rent-charge of 1000*l.*, or so much thereof as shall from time to time happen to be in arrear and unpaid, together with all such costs and expenses as the said [*intended wife*] or her assigns, or the said [*trustees of terms*], or the survivor of them, his executors or administrators, or any of them, shall sustain by reason of the non-payment of the same yearly rent-charge, or any part thereof, at the days and times and in manner before appointed for the payment thereof, and to apply the same monies accordingly; *And upon this further trust (e);* that, in case there shall be issue of the said [*intended husband*] by his said intended or any future wife or wives, other than and

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(e) Here, it will be observed, one term of years is made to answer the double purpose of securing the widow's jointure, rent-charge, and the younger children's portions, for which distinct terms are sometimes created. *Vide ante, p. 227.*

BY TENANT  
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except an eldest or only son, one child, who being a son shall live to attain the age of twenty-one years, or being a daughter shall live to attain that age or marry, *Upon trust* that they the said [*trustees of terms*], or the survivor of them, his executors or administrators, do and shall, either in the lifetime of the said [*intended husband*], with his consent in writing (*f*), or else not until after his decease, (but subject and without prejudice to the life estate of the said [*father of intended husband*] in the said hereditaments in the counties of York and Lincoln, and also to the said yearly rent-charge of 1000*l.* hereinbefore limited as aforesaid, and to the remedies for recovering the same), by demise, sale, or mortgage of the said manors and other hereditaments comprised in the said term of six hundred years, or of a competent part thereof, for all or any part of the same term, or by such other ways and means as to the same trustees respectively shall seem expedient, raise and borrow or take up at interest the sum of 12,000*l.* of lawful money of Great Britain and Ireland, for the portion of such child, not being an eldest or only son as the case shall happen, the same to be paid to such child, if a son, at the age of twenty one years, or if a daughter at that age or day of marriage, which shall first happen; and in case there shall be issue of the said [*intended husband*] by his said intended or any future wife or wives other than and except an eldest or only son, two or more children, who being a son or sons shall live to attain the age or respective ages of twenty-one years, or being a daughter or daughters shall live to attain that age or marry, which shall first happen, then do and shall, (but subject and without prejudice as aforesaid), either in the lifetime of the said [*intended husband*] with his consent in writing, or else not until after his decease, by the ways and means aforesaid, raise or borrow and take up at interest the sum of 20,000*l.* of like lawful money, for the portions of such two or more children (other than and except

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(*f*) As to the expediency of enabling the tenant for life in these cases to accelerate the term in the event of his appointing any portion or portions to be raised in his lifetime, *vide* Hayes's Introd. Conv. Append. 75, n., 52. Mortgagees and purchasers too ought to be exempted from seeing to the application and from inquiring into the necessity of raising money under the trusts, though, in limiting terms of years for raising portions, &c., these points are often not attended to.

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Trust to raise  
interest on ex-  
pectant portions,  
and apply the  
same by way of  
maintenance.

Until the age of  
twelve years 2l.  
per cent., after  
that age 4l. per  
cent.

As to the vest-  
ing of portions.

an eldest or only son, as the case shall happen), the same to be divided in equal shares between or among such children, and to be paid to such of them as shall be a son or son at his or their age or respective ages of twenty-one years, and to such of the said children as shall be a daughter or daughters at her or their age or respective ages of twenty-one years, or day or respective days of marriage, which shall first happen (g). *Provided always*, that no such sale or mortgage as is hereinbefore mentioned of the said hereditaments in the said counties of York and Lincoln, or either of them, shall be made in the life of the said [*father of intended husband*], unless with his consent, testified in writing under his hand and seal; *And upon this further trust*, that they the said [*trustees of terms*], or the survivor of them, his executors or administrators, do and shall in the meantime, from and after the decease of the said [*intended husband*], and until the said portions of such daughters and younger sons shall respectively become payable as aforesaid, by and out of the annual rents and profits of the said hereditaments and premises comprised in the said term of six hundred years, (but subject and without prejudice as aforesaid), raise and levy such yearly sum and sums of money as are hereinafter mentioned, (that is to say), until such child or children shall respectively attain the age of twelve years, such yearly sum for each of them as will amount unto and be equal with the interest of their respective expectant portions after the rate of 2l. per centum per annum; and after the age of twelve years, until they shall respectively be entitled to receive their respective portions, such yearly sum for each of them as will amount unto and be equal with the interest of the respective expectant portions after the rate of 4l. per centum per annum, the said yearly sums for maintenance to be paid half yearly by equal portions at or upon the 25th day of March and the 29th day of September in every year, the first payment

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(g) It is certainly more usual, in framing trusts for younger children in marriage settlements, to vest the portions immediately on the birth of objects, and then, by clauses of survivorship and accruer, to dispose of the shares of such as die before the prescribed age or period of payment, as exemplified in former precedents. *Vide* pp. 228, 296. The present form, however, which suspends the vesting *ab initio*, though somewhat less explicit, is equally efficient and far less complex.



thereof to be made on such of the said days as shall first happen after the decease of the [*intended husband*]; and it is hereby declared, that it shall be lawful for the said [*trustees of terms*], or the survivor of them, his executors or administrators, to pay and apply the said annual sums, to be raised for maintenance as aforesaid, or in their or his discretion to pay the same to the guardian or guardians for the time being of the said child or children respectively for the purposes aforesaid, without any liability to see to the application thereof; *And upon this further trust*, that they the said [*trustees of terms*], and the survivor of them, his executors and administrators, do and shall permit the person or persons to whom the immediate reversion or remainder expectant upon the determination of the said term of six hundred years of and in the premises therein comprised shall for the time being belong, to receive the surplus of the rents and profits thereof which shall remain after the execution and performance of the trusts of the said term of six hundred years. *Provided always*, and it is hereby declared and agreed, that it shall be lawful for the said [*trustees of terms*], and the survivor of them, his executors or administrators, at any time after the decease of the said [*intended husband*], from time to time, by the ways and means aforesaid, to raise any part of the expectant portion or portions hereby intended for any such younger son or sons, not exceeding in the whole one half of his or their expectant portion or portions, and apply the same for the placing such younger son or sons in any business, profession, or employment, or otherwise for his or their advancement or benefit, notwithstanding his or their portion or portions shall not be then due and payable or vested. *Provided also*, and it is hereby further declared and agreed, that in case the said [*intended husband*] shall in his lifetime give or advance any sum or sums of money for or towards the preferring or advancing any of the said children who may be presumptively entitled to a portion or portions under or by virtue of these presents as aforesaid, being a son or sons, in the way of or for the placing him or them in any profession, business, or employment, or if he the said [*intended husband*] shall advance any of the said children, being a daughter or daughters, in marriage, in his lifetime, then and in such case, if any such sum or sums so to be advanced shall be equal to or exceed the portion or portions hereinbefore provided for

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Trust to permit  
the persons en-  
titled in remain-  
der to receive  
the residue of  
the rents.

Advancement of  
sons.

Advances by the  
intended hus-  
band in his life-  
time to be  
deemed total  
or partial satis-  
faction of por-  
tions.

BY TENANT  
FOR LIFE AND  
REMAINDER-  
MAN IN TAIL.

Proviso for ces-  
sor of term of  
600 years.

Power to the  
husband to  
jointure any fu-  
ture wife.

such child or children respectively, such advanced sum or sums shall be accounted in full for such portion or portions as aforesaid; but if such advanced sum or sums shall be less than such portion or portions, then the same shall be accounted as part thereof respectively, unless he the said [*intended husband*] shall declare the contrary thereof respectively by any writing under his hand. (*Add declaration that mortgagees and purchasers shall not be responsible for the application of mortgage or purchase monies, or bound to inquire into the necessity of raising them*). *Provided also*, and it is hereby further declared and agreed, that when the trusts hereinbefore declared concerning the said term of six hundred years limited as aforesaid shall have been performed or satisfied, or shall have become unnecessary or incapable of taking effect, and the costs and charges of the trustees of the same term, their executors, administrators, and assigns, in the execution of the same trusts, shall have been paid and satisfied, (and which they are hereby empowered to raise by all or any of the means aforesaid, and to retain accordingly), or in case the said [*intended husband*], his heirs or assigns, shall to the satisfaction of the trustee or trustees for the time being of the said term of six hundred years effectually secure the said jointure and portions, and all maintenances in respect thereof upon or out of some other freehold estate in England of equal value, then and from thenceforth the said term of six hundred years of and in the premises therein comprised, or so much thereof as shall remain unsold and undisposed of for the purposes aforesaid, shall cease, determine, and be utterly void to all intents and purposes whatsoever, anything hereinbefore contained to the contrary thereof notwithstanding. *Provided also*, and it is hereby declared and agreed, that, if the said intended coverture shall determine in the lifetime of the said [*intended husband*], then and in such case it shall be lawful for the said [*intended husband*], either before or after his marriage with any other woman or women as hereinafter mentioned, by any deed or deeds, writing or writings, with or without power of revocation, to be by him sealed and delivered in the presence of and attested by two or more credible witnesses, (but subject, nevertheless, and without prejudice to the said term of ninety-nine years, and the trusts thereof, and to the estate or interest hereby limited to the said [*father of intended husband*]

for his life of and in the aforesaid hereditaments in the counties of York and Lincoln, and also subject and without prejudice to the said term of six hundred years and the trusts thereof), to appoint to or to the use of any woman or women whom the said [*intended husband*] may, after the determination of the said intended coverture, happen to marry, for her or their life or lives, and for her or their jointure or jointures, and in bar or without being in bar of her or their dower, any annual sum or yearly rent-charge, not exceeding for any such woman 1000*l.* by the year, tax free, and without any deduction whatsoever, to be issuing out of and charged and chargeable upon all or any part or parts of the hereditaments hereinbefore released, with such powers and remedies for recovering such yearly rent-charge or sum, when in arrear, and for defraying all costs and expenses occasioned by the non-payment thereof, as to the said [*intended husband*] shall seem expedient; And to demise or appoint all or any of the said premises mentioned to be hereby released to any person or persons, his or their executors and administrators, for such term or terms of years, for better securing the due payment of such rent-charge, to take effect after the death of the said [*intended husband*], (but without prejudice as aforesaid), as to him shall seem expedient, so as such term and terms of years be made determinable on the ceasing of the rent-charge thereby secured, and full payment of all arrears thereof, and all costs and charges occasioned by non-payment thereof. *Provided always*, and it is hereby declared and agreed, that it shall be lawful for the said [*father of intended husband*] and [*intended husband*] respectively, at any time or times during their respective lives, when and as they shall respectively, by virtue of any of the limitations hereinbefore contained, be in the actual possession or the receipt of the rents and profits of the manors and other hereditaments hereby released, by any indenture or indentures, to be sealed and delivered in the presence of and attested by one or more credible witness or witnesses, and also by copy or copies of court roll, to demise or grant such parts of the said manors and other hereditaments as are now or have been usually so demised or granted by copy of court roll, and whereof he or they respectively shall be so in possession as aforesaid, to any person or persons for one, two, or three lives, or for any term or number of years determinable on the death or deaths of one, two, or three per-

BY TENANT  
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MAN IN TAIL.

Power to lease  
by indenture or  
copy of court  
roll for lives.

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For years.

son or persons, either in possession or reversion, so as there be not more than three lives in being at most, upon any part of the said premises so to be granted or leased at any one time, and so as no such lessee or lessees, his, her, or their heirs, executors, administrators, or assigns, be expressly made disinherited of waste, and so as upon every such grant or lease the accustomed rents, heriots, and services at least, or proportionable rents, heriots, or services, where a greater or lesser part of any farm or farms, tenement or tenements, either separately or together with any other part of the said premises or other lands, shall be demised, be reserved and made payable during the continuance thereof, such rents to be incident to the reversion expectant on such leases or grants respectively; and so as in every such grant or demise (other than upon grants or demises by copy of court roll,) there be contained a clause of re-entry for non-payment of the rent or rents to be thereby reserved for the space of twenty-one days after any part thereof shall become due, and so as the respective lessees of any of the said freehold hereditaments execute counterparts of their respective leases; and also by any such indenture or indentures to be sealed, delivered, and attested as aforesaid, to demise any part or parts of the said hereditaments hereby released, whereof the person or persons so demising or letting shall for the time being be in the actual possession as aforesaid, to any person or persons for any term or number of years not exceeding twenty-one years in possession, so as &c. (*ut ante*, p. 237) (*h*).

Power to grant  
leases with co-  
venants for per-  
petual renewal.

(*h*) In settlements of lands in Ireland, tenants for life or trustees are frequently empowered to grant building and repairing leases, with covenants for perpetual renewal, and other powers in relation to leasehold interests, which are but little known on this side the Channel. The following clauses are taken from such a settlement.

*“Provided always, and it is hereby agreed and declared, that it shall be lawful for the said [donees or donee, as the case may be], by any deed or instrument or deeds or instruments in writing, to be by them, &c. respectively sealed and delivered in the presence of and to be attested by one or more credible witness or witnesses, and either referring or not referring to the present power, to limit or appoint, by way of demise or lease, any messuages, houses, or tenements, together with any number of acres of land, not exceeding in the*



PROVIDED ALSO, and it is hereby declared and agreed, that it shall be lawful for the said [*trustees to preserve*], and the sur-

Power to sell and make exchanges, and also to enfranchise copyholds.

whole five acres, to be appertaining to each of such messuages, houses, or tenements, situate, lying, and being within the several towns of —, or any or either of them, or within the distance of one statute mile, measuring in a straight line from the centre of the said several towns (the mansion-house and demesne of — only excepted), to any person or persons who shall be willing to improve the same, and shall covenant and agree to improve the same, by erecting or building thereon any new house or houses, erections or buildings, or to rebuild or repair any of the messuages, tenements, erections, and buildings whatsoever, which now are or hereafter may be on the same hereditaments or any part thereof, and to expend such sums of money in the improvement thereof respectively, as shall be thought adequate for the interest therein to be respectively parted with, for any term or number of years, not exceeding ninety-nine years, absolute, or for one life or two or three lives in being at the same time, or for any term or number of years determinable on the decease of one person or two or three persons in being at the same time, and such leases for lives or for years determinable on lives shall contain either general or qualified covenants for perpetual renewal, or not contain such covenants, as the persons respectively exercising the present power shall think proper; nevertheless it is declared, that whenever a covenant for perpetual renewal shall be inserted in any such lease, a provision shall be inserted in the same, whereby a fine of one year's rent at the least shall be payable for every such renewal, and that any other provision may be inserted in any such lease or leases which the persons exercising this present power shall or may deem for the benefit of the persons claiming under this present settlement\*; And that all such leases shall take effect either in possession or immediately after the determination of the subsisting leases for the time being of the same hereditaments; And so that in every such limitation or appointment by way of demise or lease for years or for lives, there be reserved the most improved yearly rent or rents to be payable during the continuance of the use

\* This allows a dangerous latitude.

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vivors and the survivor of them, and the executors or administrators of such survivor, at any time or times after the solemn-

Power to grant  
leases in pursu-  
ance of cov-  
nants for re-  
newal.

or estate, or uses or estates, to be created thereby, to be incident to the immediate reversion of the hereditaments so to be limited or appointed by way of demise or lease as aforesaid, that can be reasonably had or gotten for the same, without taking (except where the leases shall be renewed under any such covenant for perpetual renewal as hereinbefore is mentioned), any fine, premium, or foregift, or any thing in the nature of a fine, premium, or foregift, for the making thereof, and so that no such limitations or appointments by way of lease or demise as aforesaid shall be valid in law, unless there be inserted therein a clause in the nature of a condition of re-entry, in case the rent shall be unpaid for any space not exceeding sixty days, and unless the tenant or lessee do execute a counterpart thereof. *Provided also* and it is hereby also agreed and declared, that it shall be lawful for the said [*donees or donee, as the case may be*], by any deed or deeds, instrument or instruments in writing, to be by them &c. sealed and delivered in the presence of and to be attested by one or more credible witness or witnesses, and either referring or not referring to this present power, to limit and appoint by way of lease or demise all such of the hereditaments hereby released as are now let upon leases under covenants for perpetual renewal, with their appurtenances, to the person or persons respectively who for the time being shall be entitled to such right of renewal for the term and estate, or terms and estates respectively, and at and under and subject to the rents, conditions, covenants, and agreements respectively, to, for, under, and subject to which the same last-mentioned hereditaments now are or hereafter may become renewable, or ought to be renewed under or by virtue of the covenant for renewal in the leases now subsisting of the same hereditaments respectively contained; (*then follows the ordinary power of leasing*). *Provided also*, and it is hereby further agreed and declared, that in case any present or future lessee of any of the said hereditaments, or any person or persons entitled to renew any lease or leases, the renewal of which is hereinbefore provided for, shall be willing and desirous to sell or dispose of or part with his subsisting interest in the said lease or leases, or his right to renew

Power to trus-  
tees to buy up  
leases.

nization of the said intended marriage, with the consent and approbation of the said [*father of intended husband*] and [*intended husband*], or of the survivor of them, with respect to such of the said manors and other hereditaments hereby

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the same, then and in every such case it shall be lawful for the said [*trustees*] and the survivor of them, and the executors and administrators of such survivor, to purchase the same respectively, at and for such price or prices in money, or at or for such other equivalent, as to them or him shall seem reasonable, and to apply any part of the trust monies which shall come to their or his hands [*mention by what means*], in the purchase of the same respectively; yet so that the same shall be done with the consent in writing of the person or persons who for the time being shall, by virtue of the limitations hereinbefore contained, be seised of or entitled to the actual freehold of the said manors or lordships and other hereditaments hereby released, or such parts thereof as shall be affected by such leases, if such person or persons shall have then attained his, her, or their respective ages of twenty-one years; but if such person or persons shall not then have attained such age, then with the consent in writing of his, her, or their guardian or guardians during such his, her, or their minority or respective minorities, testified by some writing under their, his, or her hands or hand, attested by two or more credible witnesses; and that upon every such purchase the said [*trustees*] and the survivor of them, and the executors and administrators of such survivor, with such consent, and so testified as aforesaid, shall either cause the terms, interests, and rights, which shall be purchased by them or him under this present power, to be merged in and consolidated with the freehold and inheritance of the premises, or shall otherwise dispose of the said terms, interests, and rights, in such manner as that the same shall go to or be held in trust for the persons for the time being entitled to receive the rents, issues, and profits of the hereditaments comprised in or affected by such terms, interests, and rights respectively, according to the nature and quality of the said terms, interests, and rights, so far as the rules of law and equity and the circumstances of the case will admit."

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released, as are situate in the counties of York and Lincoln, and with the consent and approbation of the said [*intended husband*] alone, with respect to such of the same manors and other hereditaments as are situate in the county of Sussex, such consent and approbation to be testified by some writing under their or his hands and seals or hand and seal (*i*), to

Clause extending power of sale to the minorities of tenants in tail.

(*i*) If the power is to continue after the decease of the tenants for life, the following addition may be made to the clause in the text.

“And from and after the decease of the survivor of them the said [*father of intended husband*] and [*intended husband*], or of the said [*intended husband*] alone, as the case may be, then with the consent and approbation of the person or persons who for the time being shall be entitled to the possession or the receipt of the rents and profits of the manors and other hereditaments hereby released, or intended so to be, for an estate of freehold under or by virtue of the limitations hereinbefore contained, such consent and approbation to be testified as aforesaid; and in case such person or persons or any of them shall then be under the age of twenty-one years, then with the consent and approbation, to be testified in like manner, of his, her, or their guardian or guardians for the time being. [*Add, if deemed necessary, but so, nevertheless, that every sale, enfranchisement, and assurance, by virtue of this present power, shall take effect within the period of twenty-one years from the time of the decease of the survivor of the said [father of intended husband] and [intended husband].*]

As to the validity of indefinite powers of sale.

Case of *Ware v. Polhill*.

The restriction in brackets is imposed in order to restrain the power, as extended in the note, within the period prescribed by the rule against perpetuities (fully stated *post*, Vol. 10, p. 37), and with a view to avoid the objection suggested by Lord Eldon in the case of *Ware v. Polhill*, 11 Ves. 257, where freehold estates were devised by will to the testator's eldest son, A., for life, remainder to trustees to preserve, remainder to the first and other sons of A. in tail male, with remainder to other children of the testator and their issue in like manner. The testator then gave all his leasehold estates to trustees, upon trust from time to time out of the rents and profits, after paying the reserved rents and renewal fines, to pay the residue thereof unto the persons who, under the limitations thereinbefore contained, should for the time being be entitled to the rents and profits of the freehold estates; and the testator empowered the trustees, their executors, &c., at any time thereafter, with the consent of the person or persons who should as aforesaid be en-



dispose of and convey, either by way of absolute sale or in exchange for or in lieu of other hereditaments, to be situate

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titled to the rents and profits of the freehold estates, or in case such person or persons should be a minor or minors, then at the discretion of the trustees, to sell and dispose of his leasehold estates, and invest the money arising therefrom in the purchase of freehold or copyhold hereditaments, to be conveyed to the same uses as the testator had subjected his freehold estates: Lord *Eldon* held, that a son of A., who died a minor and without issue, was absolutely entitled to the leasehold estates; and his Lordship expressed a strong opinion, that, with respect to these estates, the power of sale was void, as it might travel through minorities for two centuries; adding, if it is bad to the extent to which it is given, you cannot model it to make it good.

Since this period, the validity of the ordinary powers of sale has been *rexata quæstio* in the profession; the absence of all restriction in regard to the period of exercising the power has been commonly treated as an objection to titles derived under them; and even such conveyancers as were unwilling to admit the solidity of the objection, deemed it prudent not to lose sight of it in framing powers of sale. Several recent decisions, however, seem calculated to restore the confidence which was generally placed in unrestricted powers of sale previously to the case of *Ware v. Polhill*.

Thus, in the case of *Biddle v. Perkins*, 4 Sim. 135, where a testator devised real estates to the use of A. for life, with remainder to trustees to preserve contingent remainders, with remainder to the first and other sons of A. successively in tail male, with other remainders over; and the testator declared that it should be lawful for the trustees and the survivors and survivor of them, and the heirs of such survivor, at any time or times after his decease, at the request and with the consent and approbation of the person or persons who should for the time being be entitled in possession by virtue of the limitations thereinbefore contained; and in case such person or persons should be an infant or infants, then at the request and with the consent and approbation of his, her, or their guardian or guardians, to be testified as therein mentioned, to make sale and dispose of, or convey in exchange the said hereditaments. The co-heiresses of the surviving trustee, with the consent of the tenant for life, sold part of the lands under the power, and, as the purchaser objected to the title on account of the indefiniteness of the power, filed a bill for specific performance; and the usual order for the reference of the title being obtained, the Master reported in favour of the title. The defendant excepted to the report, but Sir *J. Leach*, V. C., overruled the exception, being of opinion that the power of sale was valid.

Unrestricted power of sale accompanying limitations to unborn persons in tail held to be valid.

The point was next raised in the case of *Powis v. Capron*, 4 Sim.

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in that part of Great Britain called England, or in the principality of Wales, all or any part of the manors or other

138, n., where, by marriage settlement, lands were conveyed to the use of the intended husband for life, remainder to trustees to preserve, remainder to the intended wife for life, remainder to the children of the marriage as the parents or the survivor should appoint, and in default of appointment to the children equally in tail, with remainder to such uses as the intended wife should appoint, with remainder to her in fee. In the settlement was contained a power authorizing the trustees and the survivor of them, his heirs and assigns, from time to time and at all times, at the request and by the direction in writing of the person or persons who under the limitations thereinbefore contained should for the time being be entitled to the possession or the receipt of the rents, or with the consent of his or her guardian during minority, to make sale, &c., of the premises. The trustees, having sold under the power, filed the present bill to compel the purchaser to accept the title; when the question being brought before Sir *J. Leach*, M. R., on exceptions to the Master's report in favour of the title, his Honor overruled the exceptions, and the purchaser completed his purchase.

A similar decision was made in the subsequent case of *Waring v. Coventry*, 1 Mylne & Keen, 249, by the same learned Judge, who said "I adhere to the opinion expressed by me in the case referred to (which was *Powis v. Capron*). The power is co-extensive only with the estates tail, and may like them be destroyed."

Indefinite power of sale accompanying limitations to unborn persons in fee simple held to be valid.

In all the cases which have been yet stated, it will be observed the limitations of the inheritance were in tail and not in fee simple; but in the case of *Boyce v. Hanning*, 2 Crompt. & Jerv. 334, the point arose, under a marriage settlement, which limited to the children of the marriage estates in fee simple. By indentures of lease and release of the 18th and 19th of December, 1828, A., the intended husband, conveyed the lands in question to the use of himself for life, with remainder to trustees to preserve, and, after his decease, to the intent that his intended wife might receive a yearly rent-charge for life, and subject thereto to the use of such of the children of the marriage as the husband and wife, or the survivor, should appoint, and in default of appointment to the use of all the children in fee as tenants in common; and if any should die under the age of twenty-one years without leaving issue, then to the use of the others or other of the children in fee, and if there should be no child of the marriage, or being such, he, she, or they should die under the age of twenty-one years without leaving issue, to the use of the intended husband in fee. Then followed a proviso that it should be lawful for the trustees or trustee for the time being, with the consent in writing of the intended husband and wife, or the survivor of them, and after the de-

hereditaments hereby released or intended so to be, and the inheritance thereof in fee simple, to any person or persons whomsoever, for such price or prices in money, or for such an equivalent or recompense in manors, lands, or hereditaments, as to them the said [*trustees to preserve*], or the survivors or survivor of them, or the executors or administrators of such survivor, shall seem reasonable, or to enfranchise any copyhold or customary messuages, lands, or hereditaments holden of any of the said manors hereby released, for such price or prices or sum or sums of money, or for such an equivalent or recompense in hereditaments, as to the said [*trustees to preserve*], or the survivors or survivor of them, or the executors or administrators of such survivor, shall seem reasonable (*k*); and that for the purpose of effectuating such sales, exchanges, dispositions, conveyances, or enfranchisements, it shall be lawful for the said [*trustees to preserve*], and the

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Power to revoke  
uses on sales,  
exchanges, and  
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ments.

cease of such survivor, in the discretion of the trustees or trustee for the time being, to sell all or any part of the premises, and for effectuating such sale, by any deed legally executed, to revoke the uses and appoint to new uses. The donees of the power of sale, during the lives and with the consent of the husband and wife, sold the property, and the point raised by the present case was, whether they could, under the power, confer a good title on the purchaser. The Court of Exchequer, on a case out of Chancery, certified an opinion that the donees of the power, with such consent as was thereby required, could sell and make a valid assurance to the purchaser.

In conformity to the present practice of the Courts of law, the reasons which influenced the opinion of the Court do not accompany the certificate; and in the other cases cited we are also left to conjecture the particular grounds on which these important adjudications rest; but perhaps it ought not to be inferred from the scantiness of argument in the reports, that the subject did not receive a degree of judicial consideration commensurate with its importance. The conclusion from the cases would seem to be, that it is no objection to a power of sale affecting lands which are limited to persons *in esse* for life, with remainder to unborn persons in tail or in fee, that the power is not in terms restricted to the period of the lives of the tenants for life, or even, it should seem, that it is not restricted to the minorities of the unborn *cestuis que use* of the inheritance, but is altogether general and indefinite in regard to the period of its exercise.

Remarks upon  
the cases.

(*k*) The precedent in the text exhibits a concise form of the power of enfranchising copyholds, which has for the most part superseded the clauses formerly used, remarkable only for their extreme verbosity.

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Power to give  
discharges for  
purchase-mo-  
ney.

The money to  
arise from sale  
or enfranchise-  
ment, or to be  
received for  
equality of ex-  
change, to be  
laid out in the  
purchase of  
lands.

survivors and survivor of them, and the executors or administrators of such survivor, with such consent and approbation as aforesaid, by any deed or deeds, instrument or instruments in writing, sealed and delivered by them or him in the presence of and attested by two or more credible witnesses, absolutely to revoke, determine, and make void all and every or any of the uses, trusts, powers, and provisoes hereinbefore limited, declared, and expressed of or concerning the said premises, or any part or parts, parcel or parcels thereof, and by the same or any other deed or deeds, instrument or instruments in writing, to limit, declare, direct, and appoint any use or uses, estate or estates, trust or trusts of the said premises, or any part or parts, parcel or parcels thereof, which it shall be thought necessary or expedient to limit, declare, direct, or appoint, in order to effectuate such sales, exchanges, dispositions, conveyances, or enfranchisements as aforesaid; *And also* that upon any such exchange as aforesaid, it shall be lawful for the said [*trustees to preserve*], or the survivors or survivor of them, or the executors or administrators of such survivor, to give or receive any sum or sums of money by way of equality of exchange; *And also* that upon payment of the money arising by any sale or enfranchisement of the said premises, or any part thereof, or to be received for equality of exchange as aforesaid, or any part thereof, it shall be lawful for the said [*trustees*], and the survivors and survivor of them, and the executors or administrators of such survivor, to sign and give receipts for the same, and that such receipts shall be sufficient discharges to the person or persons to whom the same shall be given for the money therein respectively acknowledged or expressed to be received, and that such person or persons, his, her, or their heirs, executors, administrators, and assigns, shall not afterwards be answerable for any loss, misapplication, or non-application of such money, or be obliged or concerned to see to the application thereof; *And it is hereby also agreed and declared* that when all or any part of the manors and other hereditaments and premises hereby released shall be so sold, or any such copyhold or customary messuages, lands, or tenements shall be so enfranchised, for a valuable consideration in money, or any money shall be so received for equality of exchange as aforesaid, all and every the sum and sums of money to arise by such sale or sales, enfranchisement or en-



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franchisements, or to be received for equality of exchange as aforesaid, shall, with all convenient speed, be laid out and invested by them the said [*trustees to preserve*], or the survivors or survivor of them, or the executors or administrators of such survivor, with such consent and approbation as are hereinbefore required to the sale and conveyance of the hereditaments, from which the same sum and sums of money shall have arisen, and if the persons or person whose consent and approbation are so required shall be then dead, then in the discretion and of the absolute authority of the said [*trustees to preserve*], or the survivors or survivor of them, or the executors or administrators of such survivor (*l*), in the purchase of other freehold, copyhold, or leasehold hereditaments, (the copyholds and leaseholds being contiguous to the freeholds, and convenient to be held therewith, or with any of the hereditaments hereby released, and not more than one-fourth part in value), free from incumbrances (except quit rents or copyhold rents and services), to be situate or arising in that part of Great Britain called England, or the principality of Wales, and as well the manors and hereditaments so to be purchased as last mentioned, as those to be taken in exchange as aforesaid, shall be conveyed To such and the same uses, upon such and the same trusts, and for such and the same intents and purposes, and subject to such and the same powers, provisoes, declarations, and agreements as are in and by these presents limited or expressed, or as under or by virtue of any of the powers herein contained shall or may happen to have been limited or created concerning the said manors and other hereditaments respectively hereby released, in lieu whereof such purchases or exchanges shall be respectively made as aforesaid, or as near thereto as the death of parties or other contingencies will

(*l*) Although it is not usual or in general expedient to give trustees a discretionary power to sell lands which are limited to uses in strict settlement, yet, when the sale has taken place, it may be well to authorize them, after the decease of the tenant for life, to re-invest the money in land at their own discretion; at all events, their discretion should extend to the temporary investment of the monies until the re-investment in realty, because the tenant for life, who has concurred in the sale, may happen to die before its completion, and without leaving any authority respecting the application of the purchase-money.

As to giving trustees a discretionary power to invest purchase-money.

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Until such purchase the money to be invested on securities.

admit of, yet so that, if any of the lands so to be purchased shall be held by lease or leases for years, the same shall not vest absolutely in any person who shall take an estate tail male or any estate tail general by purchase, under the limitations hereinbefore contained, until such person shall attain the age of twenty-one years or shall die under that age, leaving male issue living at his decease, or shall die leaving female issue so living, in case all and every the estate and estates tail male hereby intended to be created shall then have actually failed and determined (*m*); And it is hereby agreed and declared, that if any of the lands so to be purchased as aforesaid shall be held by lease or leases for lives or for years, which may happen to become renewable, proper provisions shall be inserted in the settlements to be made thereof as aforesaid, for renewing the same from time to time as occasion shall require, and that the fines, fees, and expenses of such renewal or renewals shall from time to time be defrayed by and out of the annual rents, issues, and profits thereof; *And* it is hereby further declared and agreed, that in the meantime, and until the monies arising by such sale or sales, enfranchisement or enfranchisements, or to be received for equality of exchange as aforesaid, shall be invested in a purchase or purchases as aforesaid, it shall be lawful for the said [*trustees to preserve*], or the survivors or survivor of them, or the executors or administrators of such survivor, by and with such consent and approbation, or in such discretion and of such absolute authority as aforesaid, as the case may be, to place out such sum or sums of money at interest, in their or his names or name, either in the public stocks or funds of the United Kingdom, or upon real securities in England; and also with such consent and approbation as aforesaid, or in such discretion and of such absolute authority as aforesaid, as the case may be, from time to time to call in the principal money so as aforesaid placed out, or to sell and dispose of the funds whereupon the same shall for the time being be invested, and to place out the monies thereby arising in or upon such new or other stocks, funds, or securities of the same or the like nature, as the said trustees or trustee shall think proper; and the interest, divi-

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(*m*) These special words are rendered necessary by the fact of there being limitations in tail male, and also limitations in tail general.

dends, and annual produce arising from such stocks, funds, or securities, shall be paid and applied to such person and persons, and in such manner as the rents and profits of the hereditaments hereinbefore directed to be purchased would be payable and applicable in case any such purchase or purchases and settlement were then actually made. AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance of the power in this behalf contained in an act passed in the third and fourth years of the reign of his present Majesty William the Fourth, intituled "An Act for the Abolition of Fines and Common Recoveries, and the Substitution of more simple Modes of Assurance," the said [*intended husband's father*] and [*intended husband*] respectively do hereby appoint [A. B.] of —, and [C. D.] of —, to be protectors of this settlement during the term of the natural lives of the said [*intended husband's father*] and [*intended husband*], and the life of the survivor of them, as to and concerning such and so many of the hereditaments hereby released as are situate or arising in the counties of York and Lincoln, and during the term of the natural life of the said [*intended husband*], as to and concerning such of the same hereditaments as are situate or arising in the county of Sussex; *Provided nevertheless*, and it is hereby agreed and declared, and the said [*intended husband's father*] and [*intended husband*] do hereby respectively direct and declare, that, in case during the lives of the said [*intended husband's father*] and [*intended husband*], or the life of the survivor of them, the said [*protectors*] (*n*), or either of them, or any protector to be appointed as hereinafter mentioned, shall die, or be desirous to relinquish his office, then and in such case, and so often as the same shall happen, it shall be lawful for the survivor or other of the protectors for the time being, or if there shall be no such protector, then for the protectors or protector who shall so relinquish their or his office, and if there

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Further *testa-*  
*tum*.

Appointment of  
protector.

Power of ap-  
pointing new  
protectors in  
case of vacancies  
in the office by  
death or relin-  
quishment.

(*n*) It is observable that the act does not admit of the power of nominating to the protectorship being extended to any other event than its becoming vacant by death or relinquishment. In case of the protector being an infant (unless owner of the prior estate), lunatic, traitor, or felon, or not being to be found, the act vests the office in the King's Commissioner of Lunacy (usually the Lord Chancellor), or the Court of Chancery. One feels some curiosity to see by what principles the Court will regulate the exercise of its discretion.

Extent of the  
power of ap-  
pointing new  
protector.

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Recital of lease  
for lives.

shall be none such, then for the executors or administrators of the last deceased protector, by any deed or deeds to be duly enrolled pursuant to the hereinbefore mentioned act of Parliament, to appoint any person or persons to be a protector or protectors in the room of the person or persons who shall so die or shall relinquish the office as aforesaid, either jointly with the continuing protector, or solely, as the case may be (o). AND WHEREAS, by indenture bearing date on or about the — day of —, in the year of our Lord —, and made or expressed to be made between the Reverend Dr. —, clerk, prebendary of —, in the cathedral of St. Paul, London, of the one part, and [lessee], of —, of the other part, the said [lessor] did demise unto the said [lessee], his heirs and assigns, All that the parsonage of —, in the county of —, and all the glebe lands, housing, and barns of and belonging to the said parsonage in the parish of — aforesaid, with all the tithes of corn and all and singular other profits and commodities to the said parsonage in anywise belonging or appertaining (except and always reserved out of that demise or grant all the great timber growing in or upon the said glebe lands, or any part or parcel thereof, with free liberty to sell and carry away the same at all reasonable seasons, and by all ways necessary and convenient; And also the gift of patronage and presentation of or to the vicarage of — aforesaid, when and as often as it should be void); To hold the same unto the said [lessee], his heirs and assigns, for the natural lives of the said [father of intended husband], [intended husband], and [other cestui qui vie], and the life of the longest liver of them, at the yearly rent of £—, and subject to the yearly rent of 65s. to the vicar of — aforesaid for the time being, and under and subject to the covenants and agreements therein contained on the tenant's part to be done and performed. AND WHEREAS the said [lessee], by a deed poll or instrument in writing under his hand and seal, bearing even date with the hereinbefore recited indenture of lease, declared that the same lease was made to him and his heirs, In trust for the only benefit of the said [father of intended husband], his executors, administrators, or assigns. AND WHEREAS, by an indenture bearing date the — day of —, in the year of our Lord —, the

— of declaration  
of the trust  
of lease.

— of lease for  
years.



dean and chapter of the cathedral and metropolitan church of Christ, Canterbury, demised to the said [*father of intended husband*], *All that* their rectory or parsonage of —, in the said county of Kent, with all houses, edifices, and buildings, tithes, oblations, and other commodities and profits whatsoever to the said parsonage or rectory belonging or appertaining, or which of right ought to belong or appertain, (except and always reserved to the said dean and chapter, and their successors, the advowson, gift, and patronage of the vicarage of the parish church of — aforesaid): And with the said parsonage the said dean and chapter did also thereby demise and to farm let unto the said [*father of intended husband*], *ALL THAT (describe parcels)*; To hold the same to the said [*father of intended husband*], his executors, administrators, and assigns, from the — day of — then last, for the term of twenty-one years, at the yearly rent of £—, and — quarters of wheat or the price thereof, at the election of the said dean and chapter, and subject to the yearly payment of the sum of £— for the use of the vicar of the parish church of — aforesaid, and under and subject to the covenants and agreements therein contained on the tenant's part to be done and performed.

AND WHEREAS, under and by virtue of indentures of lease and release and assignment, the lease bearing date the day next before the day of the date of the release and assignment, and the release and assignment bearing even date herewith, and made or expressed to be made between the said [*lessee*] of the first part, the said [*father of intended husband*] of the second part, and the said [*trustees to preserve*] of the third part, All and singular the said premises comprised in and intended to be demised by the said recited indentures of lease of the — day of —, and the — day of —, have been granted, released, assigned, and conveyed unto and to the use of the said [*trustees to preserve*], their heirs, executors, administrators, and assigns respectively, according to the nature and quality of the same premises respectively, for all such terms and estates as were thereof respectively granted or demised by the same indentures of lease respectively as aforesaid, upon such trusts, and to and for such ends, intents, and purposes, and under and subject to such provisoes, declarations, and agreements as were or should be expressed and declared by an indenture of five

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— of convey-  
ance and assign-  
ment to trus-  
tees upon trusts,  
to be declared  
by this settle-  
ment.

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Further *testa-  
tum*.

Declaration of  
trust of the  
leaseholds.

In trust for the  
father of intend-  
ed husband un-  
til the marriage.

After marriage  
to pay reserved  
rents and renew  
leases, and sub-  
ject thereto,

parts therein expressed to be then already prepared and intended to bear even date with the said indenture of release and assignment, and to be made between the same as are parties hereto, meaning these presents. NOW THIS INDENTURE FURTHER WITNESSETH, that, in consideration of the said intended marriage, and of all and singular other the premises, it is hereby declared and agreed by and between all and every the said parties hereto, that the said parsonages or rectories, lands, tithes, and hereditaments comprised in and intended to be demised by the said recited indentures of lease of the — day of — and the — day of —, and which have been so conveyed and assigned to them the said [*trustees to preserve*], and their heirs, executors, administrators, and assigns respectively as aforesaid, are and have been so conveyed and assigned, and that they the said [*trustees*], and their heirs, executors, administrators, and assigns respectively, shall and will stand and be seised and possessed thereof, *In trust* for the said [*father of intended husband*], his heirs, executors, administrators and assigns respectively, according to the nature and quality of the same premises, until the said intended marriage shall be solemnized; and immediately after the solemnization thereof, *Upon trust* that they the said [*trustees to preserve*], and the survivors and survivor of them, or the heirs, executors, or administrators of such survivor respectively, shall and do, by and out of the rents and profits of the same leasehold hereditaments and premises respectively, pay the rents and annual sums reserved by the hereinbefore recited indentures of lease respectively; and subject thereto, do and shall renew the leases thereof from time to time, and as often as occasion shall require, and for that purpose do and shall make such surrenders of the leases to be renewed as shall be requisite in that behalf; and do and shall by and out of the annual rents and profits of the same leasehold premises respectively, or by mortgage thereof, or of any part thereof (*p*), raise so much money as shall be sufficient for paying the several fines and other necessary charges for such renewal; and subject thereto, do and shall (but subject to the proviso hereinafter contained respecting the said leasehold premises so demised for years as aforesaid) stand and be

seised and possessed of and interested in all the said leasehold hereditaments and premises, according to the nature and quality thereof respectively, *In trust* for such person and persons, for such estates, rights, and interests, with such remainders and limitations over, and under and subject to such powers, provisoes, restrictions, declarations, and agreements as are hereinbefore expressed and declared of and concerning the said manors and other hereditaments hereby released, as are situate and arising in or within the said county of Sussex, so far as the nature of the said leasehold premises respectively, the rules of law and equity, the deaths of parties, and other contingencies will admit of. (*Add clause authorizing trustees to give receipts to mortgagees, and exempting mortgagees from inquiring as to the necessity of mortgaging*). *Provided always*, and it is hereby expressly declared and agreed, that no person who shall take an estate in tail male, or an estate in tail general by purchase, under the limitations hereinbefore contained, in such of the manors and hereditaments hereby released as are situate in the county of Sussex, shall be entitled to the absolute property in the said leasehold premises so demised for years as aforesaid, until such person shall have attained the age of twenty-one years, unless he shall die under that age leaving male issue living at his decease, or, leaving female issue so living, in case all and every the estate or estates tail male hereby intended to be created shall then have actually failed or determined (q). And the said

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Upon trusts corresponding with the limitations of the freehold lands.

Covenants for

(q) It is a settled rule of construction, that words which, when applied to realty, would create an estate tail, will, when employed in disposing of personalty, confer an absolute interest. Hence, in the present instance, the first son of the intended husband, who takes an estate tail in the freeholds immediately on his birth, would, but for the negative declaration in the text, at the same instant become absolutely entitled to the chattel leaseholds; (see *Ware v. Polhill*, 11 Ves. 257); and, consequently, if the first son afterwards died without issue, the freeholds and leaseholds, unless the son next in seniority to whom the freeholds pass happened to become entitled as the next of kin or legatee of the elder, would become severed. The clause in the text prevents this separation, where the tenant in tail dies without leaving issue *during minority*; farther than this it cannot go without infringing the rule against perpetuities. Indeed, as any son at majority may destroy the entail, the scheme of preserving the union of the two estates is necessarily liable to be defeated at this point of time.

Words conferring an estate tail give the absolute interest in personalty.

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the title by intended husband and his father restricted to their respective estates;

—That covenants have right to convey;

—That father has right to declare trusts of leaseholds;

For quiet enjoyment;

Free from incumbrances;

[*father of intended husband*], as to and concerning the manors and other hereditaments hereinbefore expressed to be hereby granted and released during the life of him the said [*father of intended husband*], and the acts, deeds, and defaults of the said [*father of intended husband*], or any of his ancestors, and the said [*intended husband*], as to and concerning the inheritance in fee simple in remainder, expectant on the decease of the said [*father of intended husband*] in the same hereditaments, and the acts, deeds, and defaults of him the said [*intended husband*], or any of his ancestors, do hereby for themselves respectively, and for their respective heirs, executors, and administrators, covenant and agree with the said [*trustees to preserve*], their heirs, executors, and administrators respectively, in manner following, that is to say, that, notwithstanding any act, matter, or thing whatsoever, made, done, executed, or suffered by the said [*father of intended husband*] and [*intended husband*] respectively, or any of their ancestors, they the said [*father of intended husband*] and [*intended husband*], or one of them, now at the time of the sealing and delivery of these presents, have or hath in themselves or himself good right, full power, and lawful and absolute authority to grant, release, and convey the said manor and other hereditaments hereby released, or intended so to be, with their appurtenances; And that the said [*father of intended husband*] hath good right to declare the trusts of the said leasehold premises in the manner hereinbefore expressed, and according to the true intent and meaning of these presents; And that the same manor and other hereditaments hereby released, or intended so to be, and also the said leasehold premises, shall from time to time and at all times hereafter, remain, continue, and be to and for the several uses, intents, and purposes, upon the trusts, and subject to the powers, provisoes, declarations, and agreements hereinbefore expressed concerning the same respectively, and shall and may be held and enjoyed accordingly; And that free and clear, and freely and clearly acquitted, exonerated, and discharged, or otherwise by the said [*father of intended husband*] and [*intended husband*] respectively, and their respective heirs, executors, or administrators, effectually saved harmless and kept indemnified of, from, and against all and all former and other estates, titles, charges,



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REMAINDER-  
MAN IN TAIL.

and incumbrances whatsoever, made, created, or suffered by the said [*father of intended husband*], the said [*intended husband*], respectively, or any of their ancestors, or by any person or persons whomsoever lawfully claiming by, from, or under, or in trust for them or any of them, or occasioned by their or any of their acts, defaults, privity, consent, means, or procurement, (except such leases and estates for years as are now in being of and in the premises, or any part thereof, whereupon the improved or accustomed rents are respectively reserved and made payable); *And moreover*, that the said [*father of intended husband*] and [*intended husband*] respectively, and the heirs of the said [*intended husband*], and every other person lawfully claiming any estate, right, title, trust, or interest of, in, to, or out of the said manors and other hereditaments hereby released, or intended so to be, or of, in, to, or out of the said leasehold premises, or any part thereof respectively, from, by, or under, or in trust for them or either of them, or the ancestors of either of them the said [*father of intended husband*] and [*intended husband*], (except the persons for the time being entitled to such leases and estates for years as aforesaid), shall and will from time to time, and at all times hereafter, upon every reasonable request of the said [*trustees to preserve*], or the survivors or survivor of them, their or his heirs, executors, or administrators, or assigns, but at the costs and charges of the said [*father of intended husband*] and [*intended husband*], or one of them, or one of their respective heirs, executors, or administrators, so long as the said hereditaments respectively shall (*r*) be and remain subject to the uses, trusts, and limitations of these presents, and afterwards at the costs and charges of the person or persons making such request, make, do, and execute, or cause and procure to be made, done, and executed all and every such further acts, deeds, conveyances, and assurances in the law whatsoever for the further and more effectually conveying and assuring the said manors and other hereditaments hereby released, or intended so to be, and the said leasehold premises, with their appurtenances, to and for the

For further assurance.

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(*r*) Now that fines and common recoveries are abolished, the words "acknowledge, levy, and suffer," which referred exclusively to those assurances, should not be inserted in covenants for further assurance.

BY TENANT  
FOR LIFE AND  
REMAINDER-  
MAN IN TAIL.

uses, ends, intents, and purposes, upon the trusts, and subject to the powers, provisoes, declarations, and agreements hereinbefore expressed concerning the same respectively, as by the said [*trustees to preserve*], or the survivors or survivor of them, or their or his heirs, executors, administrators, or assigns, or their or his counsel in the law, shall be reasonably devised or advised and required. IN WITNESS, &c.

APPOINTMENT  
OF PROTECTOR  
UNDER A  
POWER.

DEED APPOINTING *a new* PROTECTOR(*a*) UNDER  
*a Power in a Marriage Settlement, (last Pre-*  
*cedent).*

Parties.

Recital of set-  
tlement.

**THIS** INDENTURE, made the — day of —, 18—, BETWEEN [*donee of power*], of &c., of the one part; and [*protector*], of &c., of the other part: WHEREAS, by indentures of lease and release, bearing date respectively on or about the — and — days of —, the release being made between &c., (*state parties' names*), being the settlement executed between [*husband*] and [*wife*], his wife, certain freehold lands and hereditaments, situate and arising within the several counties of York, Lincoln, and Sussex, were conveyed and assured, (subject to certain terms of years respectively created for the purposes therein expressed), to the uses following, to take effect after the solemnization of the said then intended marriage between the said [*husband*] and [*wife*], his wife, that is to say, as to and concerning the said hereditaments si-

Remarks on the  
precedent in the  
text.

(*a*) The forms of deeds executed on a change of trustees, (see Vol. 6, p. 491), will readily suggest the variations requisite to adapt the precedent in the text to the case of a protector relinquishing his office. As such relinquishment, as well as the new appointment, must be effected by an inrolled deed, the convenient course would be to comprehend both objects in one instrument, as is invariably done on a change of trustees, in which there is only this difference, that the power seldom requires (as in this instance the act does) that the relinquishment should be signified by deed. Considering that the protector's duty involves the mere exercise of a discretion without trouble or responsibility, (*vide ante*, p. 408), relinquishment of the office is not likely often to occur.

APPOINTMENT  
OF PROTECTOR  
UNDER A  
POWER.

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tuatē in the counties of York and Lincoln, To the use of the said [*husband's father*] during the term of his natural life, and from and after his decease, as to and concerning the said hereditaments situate and arising within the counties of York and Lincoln, and from and immediately after the solemnization of the said marriage, as to and concerning the said hereditaments situate and arising in the county of Sussex, to the use of the said [*husband*] during the term of his natural life; and from and after his decease, (subject to interposed limitations to trustees for preserving contingent remainders, and to a rent-charge limited to the said [*wife*] during her life), to the use of the first and every other son of the said [*husband*] by his then intended or any future wife or wives successively in tail male, with remainder to the first and every other son of the said [*husband*] by his then intended or any future wife or wives in tail general, with the ultimate remainder to the use of the said [*intended husband's father*] in fee: And in and by the indenture now in recital, the said [*settlers*], in pursuance of the power in that behalf contained in an act passed in the third and fourth years of the reign of his present Majesty, William the Fourth, intituled "An Act for the Abolition of Fines and Common Recoveries, and the Substitution of more simple Modes of Assurance," respectively appointed the said [*donee*] and [*deceased protector*] to be protectors of the said settlement now being recited, during the term of the natural lives of the said [*intended husband's father*] and [*intended husband*], and the life of the survivor of them, as to and concerning such and so many of the hereditaments thereby released as are situate or arising in the counties of York and Lincoln, and during the term of the natural life of the said [*intended husband*], as to and concerning such of the same hereditaments as are situate or arising in the county of Sussex. *Provided nevertheless*, and it was thereby agreed and declared, and the said [*intended husband's father*] and [*intended husband*] did thereby respectively direct, that, in case during the lives of the said [*intended husband's father*] and [*intended husband*] or the life of the survivor of them, the said [*protectors*], or either of them, or any protector to be appointed as thereafter mentioned should die, or be desirous to relinquish their or his office, then and in such case, and so often as the same should happen, it should be lawful for the survivor or other of the

APPOINTMENT  
OF PROTECTOR  
UNDER A  
POWER.

Death of one of  
the protectors,  
and proposed  
new nomination.

*Testatum.*

Donee, in pursuance of power,  
appoints new  
protector.

protectors for the time being, or if there should be no such protector, then for the protectors or protector who should so relinquish their or his office, and if there should be no such relinquishing protector, then for the executors or administrators of the last deceased protector, to appoint any person or persons to be a protector or protectors in the room of the person or persons who should so die, or should relinquish the office as aforesaid, either jointly with the continuing protector, or solely, as the case might be. AND WHEREAS the said [*husband's father*] and [*husband*] are both living: AND WHEREAS the said [*deceased protector*], one of the protectors appointed by the hereinbefore recited indenture of settlement as aforesaid, lately departed this life, and the said [*donee*] is desirous of nominating the said [*new protector*] in the room of the said [*deceased protector*], to be protector jointly with him the said [*donee*] of the hereinbefore recited settlement, and the said [*new protector*] hath consented and agreed to accept the said office as he doth hereby testify and acknowledge. NOW THIS INDENTURE WITNESSETH, that, in pursuance of such intention, and by virtue and in execution of the power and authority in this behalf contained in the hereinbefore recited indenture, and of all other powers and authorities enabling the said [*donee*] in this behalf, he the said [*donee*] DOth, by these presents, nominate and appoint the said [*new protector*] in the room and place of the said [*deceased protector*], deceased, to be protector of the hereinbefore recited settlement jointly with the said [*donee*], in order and to the intent that the said [*new protector*] and [*donee*] from time to time, and at all times hereafter during the lives of the said [*husband's father*] and [*husband*], as to the said hereditaments situate and arising in the counties of York and Lincoln, and during the life of the [*husband*] as to the said hereditaments situate and arising in the county of Sussex, shall and may have and exercise such and the like powers and authorities as protectors of the hereinbefore recited settlement, as the said [*new protector*], jointly with the said [*donee*], would have had and might have exercised, and as fully and effectually to all intents and purposes, as if their names had been inserted in the hereinbefore recited settlement as protectors thereof, instead of the names of the said [*deceased protector*] and [*donee*]. IN WITNESS, &c.



SURRENDER *out of Court of* COPYHOLDS *by*  
 TENANT *in TAIL in Possession, previously to*  
*his MARRIAGE*(a).

SURRENDER  
 OF COPYHOLDS  
 BY TENANT  
 IN TAIL.

The Manor of —, in the } BE IT REMEMBERED,  
 County of —. } that, on the — day of —,  
 in the year of our Lord, 18—, [*surrenderor*], one of the cus-  
 tomary tenants of the said manor, came before [A. B.], Esq.,  
 steward [*or deputy steward, as the case may be*] of the said  
 manor, and in consideration of a marriage agreed upon and in-  
 tended to be shortly solemnized between the said [*surrenderor*]  
 and [*intended wife*], of &c., spinster, did out of Court sur-  
 render into the hands of the lord of the said manor, by the hands  
 and acceptance of the said steward, [*or deputy steward, as*  
*the case may be*], by the rod, according to the custom of the  
 said manor, ALL THAT (*describe parcels*), with the appurte-  
 nances to the said premises belonging; to which said heredi-  
 taments and premises the said [*surrenderor*] was admitted  
 tenant at a general Court held for the said manor on the  
 — day of —, to hold to him the said [*surrenderor*],  
 and the heirs of his body, according to the form and effect  
 of a certain will therein mentioned or referred to; And all the  
 estate, right, title, interest, use, trust, benefit, property, claim,  
 and demand whatsoever of the said [*surrenderor*], in, to,  
 out of, and upon the said — hereditaments and premises;  
*To the use* of the said [*surrenderor*], his heirs and assigns,  
 for ever, until the solemnization of the said intended mar-  
 riage, and after the solemnization thereof, *To the use* of [*trus-*  
*tees*], of &c., their heirs and assigns, during the life of the  
 said [*intended wife*], *Upon trust* from time to time to pay  
 the rents and profits arising from the said premises unto the  
 said [*intended wife*] for her separate use, free from the con-

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(a) The recent act, (*ante*, p. 384), it will be remembered, has made legal entails in copyholds barrable by surrender only, in the form of which there is so little of peculiarity, that a variation in the few words, referring to the nature of the surrenderor's estate, would render the precedent in the text applicable to a surrender by a tenant in fee simple.

As to barring legal estates in copyholds.

SURRENDER  
OF COPYHOLDS  
BY TENANT  
IN TAIL.

trol and debts of the said [*intended husband*], her said intended husband, or any future husband with whom she may intermarry, and so that the said [*intended wife*], during her said intended or any future coverture, shall have no power to alien or anticipate the said rents and profits, or any part thereof; And from and after the decease of the said [*intended wife*] to the use of the said [*surrenderor*], his heirs and assigns, for ever.

Taken and acknowledged the } [A. B.], (*or*, Deputy Stew-  
day and year first above } ard, *as the case may be*),  
written by me, } Steward of the said manor.

DISENTAILING  
CONVEYANCE.

RELEASE in Fee (*to be inrolled in Chancery*)  
by TENANT in TAIL in Possession, to USES for  
PREVENTING DOWER, his WIFE JOINING for the  
Purpose of EXTINGUISHING HER DOWER.

Parties.

Testatum.

Release by ten-

Remark upon  
the precedent in  
the text.

**THIS INDENTURE**, made the — day of —, 18—, BETWEEN [*releasor*], of &c., and [*wife*], his wife, of the one part; and [*releasee*], of &c., of the other part, WITNESSETH, that, for the purpose of defeating and destroying all estates tail of the said [*releasor*], under or by virtue of the last will and testament of [*testator*], late of —, deceased, the uncle of the said [*releasor*], or otherwise, in the hereditaments hereinafter described and hereby intended to be released, and all estates, rights, titles, interests, and powers to take effect after the determination or in defeazance of such estates tail, and also for the purpose of extinguishing all right and title of the said [*wife*] to dower or thirds, and every other estate and interest of the said [*wife*] therein, and in order to assure the inheritance in fee simple in possession of the said hereditaments to the uses and in the manner hereinafter expressed (*a*), He the said [*releasor*] *Doth*, by these

(*a*) By omitting the nominal pecuniary consideration, the deed is prevented from taking effect as a bargain and sale inrolled under stat. 27 Hen. 8, c. 16, as to which *vide ante*, p. 439. In preparing forms under the recent act, the Editor has not in general referred expressly to the statute, because it is inconsistent with usage in conveyancing from which there

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                           |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| presents, grant, bargain, sell, and release, and the said [wife], with the privy and approbation of the said [husband], her husband, <i>Doth</i> remise, release, and quit claim unto the said [releasee] and his heirs, (in the actual possession of the said [releasee to uses] now being by virtue of a bargain and sale for a year made by the said [husband], in consideration of 5s., by an indenture bearing date the day next before the day of the date of these presents (b)), ALL THAT, ( <i>describe parcels with appropriate general words</i> ); and all the estate, right, title, interest, property, possession, benefit, claim, and demand whatsoever, both at law and in equity, or otherwise howsoever, of them the said [husband] and [wife], his wife, respectively, in, to, out of, and upon the said — and hereditaments; TO HAVE AND TO HOLD the said — and hereditaments hereinbefore described and hereby released, or intended so to be, unto the said [releasee to uses], and his heirs for ever, (absolutely free and discharged of and from all estates tail of the said [husband], and all estates, rights, titles, interests, and powers to take effect after the determination or in defeazance of the same estates tail), To the uses and upon the trusts, and for the intents and purposes hereinafter expressed, that is to say, TO SUCH | <p>DISENTAILING<br/>CONVEYANCE.</p> <p>ant in tail and<br/>his wife.</p> <p>Parcels.</p> <p>All the estate.</p> <p><i>Habendum.</i></p> <p>Uses to prevent<br/>dower.</p> |
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is no reason for departing. Besides, it may happen that an assurance derives its efficacy from *several* acts. In such cases the plan would be inconvenient, and, in unskilful hands, might be mischievous.

(b) This clause may be conveniently cut down to the dimensions in which it here appears. Its most useful office is to shew who are the proper parties to the bargain and sale for a year; and also, in case of its being lost, to raise the presumption, and, as against the releasor and his representatives, to preclude the denial, of its having existed. In the present instance, the wife, having no estate, but only a contingent or inchoate right, of course is not made one of the bargainors. Indeed, even where the inheritance is in the wife, the husband, being during the joint lives of himself and his wife seised with her of the inheritance, is competent to confer a title to the possession, by bargain and sale or otherwise, though not for one year *absolutely*, as such seisin might determine before its expiration; but this liability to determination would be immaterial, since a release may be grounded on a bargain and sale for any less period than a year. The practice, however, seems to be (as the recent rule of the Common Pleas rather implies,) to join the wife in the lease for a year, where the husband and wife are seised *jure uxoris*.

As to wife joining in lease for a year.

DISENTAILING  
CONVEYANCE.

USE OR USES, and for such estate or estates, intents and purposes, and charged and chargeable in such manner and form as the said [*husband*] shall at any time or from time to time, by any deed or deeds, direct or appoint; and in default of such direction or appointment (c), TO THE USE of the said [*husband*] and his assigns, during his natural life, without impeachment for any manner of waste; and immediately after the determination of that estate by any means in his lifetime, TO THE USE of the said [*releasee*] (d), his executors

(c) The omission of words, expressly applicable to the case of a partial appointment seems to be quite consistent with correctness, because, as to whatever interest is left undisposed of by any such appointment, there is a "default of appointment" *pro tanto*.

As to mode of  
barring dower  
under the recent  
act.

(d) It is to be observed, that, though the recent act of 3 & 4 Will. 4, c. 105, (stated *post*, Vol. 10, p. 244), has not extended dower to inheritances *in remainder*, either legal or equitable, it has rendered widows dowable out of *equitable* estates of inheritance in possession, whether partially blended with the legal ownership or not, so that the interposition of a particular estate in remainder between the immediate freehold and the ultimate remainder in fee, *subject to a trust for the owner of those estates*, would not prevent the statutory right of dower from attaching. It is evident, therefore, that the limitations now in general use, which have been skilfully contrived with a view to combine the utmost amplitude of ownership and disposing power with the exclusion of the dower, must eventually fall into disuse. This result, however, will not take place until a period shall have elapsed sufficient to insure the extinction of all women whose marriage was anterior to the 2nd of Jan. 1834; for, in the meantime, in order to avoid the necessity of inquiring into and proving the date of the owner's marriage, or whether he is married or not, it will be proper to exclude the dower *quâcunque viâ*. This is effected by the precedent in the text.

The declaration negating the dower is not the less necessary, because the intended object of the limitations is ascertained to be unmarried, or to have a wife, with whom his marriage took place on or before the 1st of Jan. 1834, because, in either case, he might afterwards marry during his ownership of the property, and such after-taken wife would, unless excluded by one of the means provided by the statute, (*vide ante*, p. 292), be dowable. Indeed, some gentlemen are of opinion that the dower, even of women married before the period in question, is subject to the regulations of the act in regard to property acquired after such period; but such a construction, it is conceived, clashes with the plain sense of the words of the enactment, which declare that the act shall not



or administrators, during the life of the said [*husband*], *In trust* nevertheless for the said [*husband*], and his assigns; and immediately after the determination of the estate lastly hereinbefore limited, To THE USE of the said [*husband*], his heirs and assigns, for ever; and to, for, or upon no other use, trust, intent, or purpose whatsoever; AND the said [*husband*] doth hereby direct and declare, that no wife of him the said [*husband*], who shall happen to survive him, shall be entitled to dower in, out of, or in respect of the said — hereditaments and premises hereby released, or intended so to be, or any part thereof. IN WITNESS, &c.

DISENTAILING  
CONVEYANCE.

Declaration neg-  
gating wi-  
dow's title to  
dower.

extend to the dower of "any widow who shall have been or shall be married on or before the first day of January, 1834." It is difficult to conceive by what ingenious process of construction, other than a most torturing one, these words can be made to denote that the act shall not extend to any title of dower which shall have attached or shall attach on or before the 1st of January, 1834, (which has been duly described\* to be their import according to the hypothesis in question). Certainly, such a strained interpretation is not demanded by the subsequent clause, which provides that the act shall not give any will, deed, contract, engagement, or charge, executed, entered into, or created before the 1st of January, 1834, the effect of defeating or prejudicing any right of dower; for what incongruity is there in saying that women married after the 1st of January, 1834, (to whom we are supposing the enactment to be confined), shall not be excluded by any deed executed before that time? The occurrence of any such question of construction may be effectually prevented by *invariably inserting in conveyances the declaration negating dower, in addition to the limitations for excluding it heretofore ordinarily used*, (as already suggested); and then, *whatever is the date of the marriage, and whatever the true construction of the act, the dowress's claim is cut off*. It will be observed, that the declaration in the precedent in the text extends to *all* widows without limitation, and also without an express designation of any class. To have restricted it to widows married after the 1st of January, 1834, would have raised the question which has been adverted to; and to have expressly extended it to the alternative class would have too palpably countenanced a construction which seems unsustained by the least shadow of plausibility.

In order to render the present deed binding on the wife of the releasor, her acknowledgment should be taken in the manner required by the recent act, the forms relating to which will be found in the pages immediately following.

Vide Hayes's Introd. Conv. p. 261.

ACKNOWLEDG-  
MENTS BY MAR-  
RIED WOMEN.

MEMORANDUM OF ACKNOWLEDG-  
MENT, (*to be indorsed on or written at the  
foot or in the margin of the last Precedent,  
and to be subscribed by the Judge, Master in  
Chancery, or Commissioners, taking the Wife's  
Acknowledgment*).

Judge's, mas-  
ter's, or com-  
missioners' me-  
morandum of  
acknowledg-  
ment.

**T**HIS deed, marked (A), was this day produced before us, [*or me, as the case may be*], and acknowledged by [*wife*], wife of [*husband*], therein named, to be her act and deed; previous to which acknowledgment the said [*wife*] was examined by us [*or me, as the case may be*] separately and apart from her husband, touching her knowledge of the contents of the said deed, and declared the same to be freely and voluntarily executed by her.

[*Signature of Judge, Master, or Commissioners,  
as the case may be.*]

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CERTIFICATE OF ACKNOWLEDGMENT,  
(*to be written or engrossed on a separate Piece  
of Parchment*), and to be subscribed by the  
*Judge, Master, or Commissioners.*

Judge's, mas-  
ter's, or com-  
missioners' cer-  
tificate.

**T**HESE are to certify, that, on the — day of —, in the year 18—, before us, two of the perpetual commissioners appointed for the county of — (a) for taking the

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(a) If the acknowledgment is taken by a Judge, or a Master in Chancery, vary the certificate as follows:—

*Or* “before me the undersigned Sir Nicholas Conyngham Tindal, Lord Chief Justice of the Court of Common Pleas, at Westminster, [*or, before me the undersigned Sir James Allan Park, Knight, one of the Justices of the Court of Com-*

acknowledgment of deeds by married women, pursuant to an act passed in the third and fourth years of the reign of his Majesty King William the Fourth, intituled "An Act for the Abolition of Fines and Recoveries, and for the Substitution of more simple Modes of Assurance," appeared personally [*Christian and surname of wife*], wife of [*husband*], of the city of —, gent., and produced a certain indenture, marked (A), bearing date the — day of —, 18—, and made between the said [*husband*] and [*wife*], his wife, of the one part, and [*releasee to uses*], of —, gent., of the other part, and acknowledged the same to be her act and deed. And we (b) do hereby certify, that the said [*wife*] was at the time of her acknowledging the said deed of full age and competent understanding, and that she was examined by us (c) apart from her husband touching her knowledge of the contents of the said deed, and that she freely and voluntarily consented to the same (d).

ACKNOWLEDG-  
MENTS BY MAR-  
RIED WOMEN.

mon Pleas, at Westminster], [*or, before me the undersigned James William Farrer, one of the Masters in Ordinary of the Court of Chancery*], (*or otherwise as the case may be*)."

It is observable, that the Commissioners have no power to act beyond the local limits of their respective districts; an acknowledgment taken elsewhere would be void; and the officer of the Common Pleas, who would discover the irregularity on the face of the affidavit, where the place of taking the acknowledgment appears, would no doubt refuse to file the certificate.

(b) *or, "I."*

(c) *or, "me."*

(d) As the act does not render an acknowledged deed binding on a minor, it is not easy to see why the persons taking the acknowledgment should have been burthened with the duty of ascertaining the freedom of the acknowledging party from this disability\*; which, let it be remembered, would vitiate her intended conveyance if it existed at the time of execution, though she might have been adult at the time of acknowledgment; so that the fact, which the legislature has so sedulously laboured to establish, is not conclusive of the validity of the deed.

Acknowledging party to be of full age.

\* The Judges of the Court of Common Pleas, however, are so far from thinking this precaution of the legislature to be uncalled for, that they have required a positive deposition to the fact of the acknowledging party being of full age and competency at the time of acknowledgment.

**ACKNOWLEDG-  
MENTS BY MAR-  
RIED WOMEN.**

The Court of Common Pleas, by the recent rule of Hilary Term, 1834, has left unaltered the form of the certificate prescribed by the act, having reserved for the accompanying affidavit the office of indicating that the course of examination enjoined by the Court has been pursued; and which affidavit, it will be observed, is equally requisite, whether the acknowledgment is taken by a Judge, or Master, or by commissioners; the only distinction being, that, in the latter case, the affidavit contains an additional clause not applicable in the other instances, and may be made either by an attorney or solicitor, as in other cases, or by one of the commissioners themselves. The rule in question is as follows:—

**“HILARY TERM, 1834.**

Rule of Hilary  
Term, 1834.

“Whereas it has been found expedient to make alterations in the General Rules made in Michaelmas Term last by this Court for the purpose of carrying into effect the statute passed in the 3rd and 4th years of the reign of his present Majesty, cap. 74, intituled ‘An Act for the Abolition of Fines and Recoveries, and for the Substitution of more simple Modes of Assurance:’

“And whereas it is necessary to make orders touching the amount of the reasonable fees and charges to be taken by the several persons appointed to carry the powers of the said act into execution; and it will be convenient that all the orders and regulations made by the Court under the said act should be contained in the same rule:

Rules of Mi-  
chaelmas Term,  
3 Will. 4, re-  
voked.

“Now, it is hereby ordered that the said General Rules be, and the same are hereby revoked: Provided that this present rule shall not be construed in any respect to invalidate any proceedings which before the 1st day of March next ensuing shall have been taken pursuant to the direction of the said rules of Michaelmas Term last.

One at least of  
the commission-  
ers before whom  
the acknow-  
ledgment is  
taken not to be  
interested or  
concerned as at-  
torney, &c.

“And it is hereby further ordered, that, where any acknowledgment shall be made by any married woman of any deed under and by virtue of the said act, before commissioners appointed under the said act, one at least of the said commissioners shall be a person who is not in any manner interested in the transaction giving occasion for such acknowledgment, or concerned therein as attorney, solicitor, or agent, or as clerk to any attorney, solicitor, or agent so interested or concerned.

Examination of  
married women.

“And it is further ordered, that, before the commissioners shall receive such acknowledgment, they, or in case one of them shall be interested or concerned as aforesaid, then such one of them as shall not be so interested or concerned, do inquire of every married woman separately and apart from her husband, and from the attorney or solicitor concerned in the transaction, whether she intends to give up her interest in the estate to be passed by such deed, without having any provision made for her in lieu of, or in return for, or in consequence of her so giving up such interest; and where such married woman, in answer to such inquiry, shall declare that she intends to give up such her interest without any provi-



sion, and the said commissioners shall have no reason to doubt the truth of such declaration, and shall verily believe the same to be true, then they shall proceed to receive the said acknowledgment; but, if it shall appear to them, or to such one of them as aforesaid, that it is intended that provision is to be made for any such married woman, then the commissioners shall not take her acknowledgment until they are satisfied that such provision has been actually made by some deed or writing produced to them, or if such provision shall not have been actually made before, then the commissioners shall require the terms of such intended provision to be shortly reduced into writing, and shall verify the same by their signatures in the margin, at the foot, or at the back thereof.

“ And it is hereby further ordered that the affidavit verifying the certificate to be made pursuant to the said act, and which certificate shall be in the form contained in the said act, shall (except, in such cases where the acknowledgment shall be taken elsewhere than in England, Wales, or Berwick-upon-Tweed) be made by some practising attorney or solicitor of one of the Courts at Westminster, or of one of the counties palatine of Lancaster or Durham; and that in all cases it shall be deposed, in addition to the verification of the said certificate, that the deponent [*or, if more than one person join in the affidavit,* that one or more of the deponents] knew the person or persons making such acknowledgment; and that, at the time of making such acknowledgment, the person or persons making the same was or were of full age and competent understanding; and that one at least of the commissioners taking such acknowledgment, to the best of his (deponent's) knowledge and belief, is not in any manner interested in the transaction giving occasion for the taking of such acknowledgment, or concerned therein as attorney, solicitor, or agent, or as clerk to any attorney, solicitor, or agent so interested or concerned; and that the names and residences of the said commissioners, and also the place or places where such acknowledgment or acknowledgments shall be taken, shall be set forth in such affidavit; and that, previously to such acknowledgment being taken, the deponent had inquired of such married woman [*or, if more than one,* of each of such married women] whether she intended to give up her interest in the estate to be passed; and also the answer given thereto; and, where any such married woman, in answer to such inquiry, shall declare that she intends to give up her interest without any provision, the deponent shall state that he has no reason to doubt the truth of such declaration, and he verily believes the same to be true: and, where any provision has been agreed to be made, the deponent shall state that the same has been made by deed or writing, or, if not actually made before, that the terms of the intended provision have been reduced into writing, which deed or writing he verily believes has been produced to the said Judge, [Master, or Commissioners].

ACKNOWLEDG-  
MENTS BY MAR-  
RIED WOMEN.

Affidavit to veri-  
fy the certifi-  
cate.

Affidavit to state the parish, &c. in which the premises are.

“ And it is hereby further ordered that the affidavit shall state the parish or several parishes, or place or several places, and the county or counties in which the several premises wherein any such married woman shall appear to be interested, shall by deed be described to be situate.

Affidavit to be in form annexed, p. 484.

“ And it is hereby further ordered that the affidavit shall be in the form hereunto annexed, subject to such variations as the circumstances of the case shall render necessary; or such affidavit may be made, where it is found convenient, by one of the said commissioners, with such variation in the form thereof as shall be necessary in that behalf.

Certificates to be delivered to the proper officer within one month.

“ And it is hereby further ordered that the certificates, and affidavits verifying the same, shall, within one month from the making the acknowledgment, be delivered to the proper officer appointed under the said act; and that the officer shall not after that time receive the same without the direction of the Court or a Judge.

Fees.

“ And it is hereby further ordered that the fees or charges to be paid for the copies to be delivered by the clerks of the peace or their deputies, or by the officer of the said Court, and for taking acknowledgments of deeds, and for examining married women, and for the proceedings, matters, and things required by the said act to be had, done, and executed, for completing and giving effect to such acknowledgments and examinations, shall be as follows:—

£ s. d.

|                                                                                                                                                                                                                                                                                                                                             |   |   |   |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---|---|
| To a Judge or Master for taking the acknowledgment of every married woman, of which 7s. 6d. will be paid, in the case of a Judge, to his clerk, and the residue thereof will be paid over to the treasury; and, in the case of a Master, the whole will be paid over to the treasury or the fee fund account of the Court of Chancery ..... | 1 | 6 | 8 |
| To the two perpetual commissioners for taking the acknowledgment of every married woman, when not required to go further than a mile from their residence, being 13s. 4d. for each commissioner .....                                                                                                                                       | 1 | 6 | 8 |
| To each commissioner, when required to go more than one mile, but not exceeding three miles, besides his reasonable travelling expenses .....                                                                                                                                                                                               | 1 | 1 | 0 |
| To each commissioner, where the distance required shall exceed three miles, besides his reasonable travelling expenses .....                                                                                                                                                                                                                | 2 | 2 | 0 |
| To the clerk of the peace, or his deputy, for every search....                                                                                                                                                                                                                                                                              | 0 | 1 | 0 |
| To the same, for every copy of a list of commissioners, provided such list shall not exceed the number of one hundred names .....                                                                                                                                                                                                           | 0 | 5 | 0 |
| To the same, for every further complete number of fifty names, an additional .....                                                                                                                                                                                                                                                          | 0 | 2 | 6 |
| To the officer, for every search .....                                                                                                                                                                                                                                                                                                      | 0 | 1 | 0 |

|                                                                                                                                                                        | £ | s. | d. | ACKNOWLEDG-<br>MENTS BY MAR-<br>RIED WOMEN. |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|----|----|---------------------------------------------|
| To the same, for every official copy of the certificate.....                                                                                                           | 0 | 2  | 6  |                                             |
| To the same, for every official copy of a list of commissioners,<br>provided such list shall not exceed the number of one hun-<br>dred names .....                     | 0 | 5  | 0  |                                             |
| To the same, for every further complete number of fifty names<br>additional .....                                                                                      | 0 | 2  | 6  |                                             |
| To the same, for preparing every special commission, includ-<br>ing a fee of five shillings to the clerk of the Chief Justice<br>or other Judge, for the fiat .....    | 0 | 15 | 0  |                                             |
| To the same, for examining the certificate and affidavit, and<br>filing and indexing the same, as required by the said act of<br>the 3rd and 4th Will. 4, c. 74* ..... | 0 | 5  | 0  |                                             |

“ And it is hereby further ordered that the fees and charges to be paid for the entries of deeds required by the said act to be entered on the court rolls of manors, and for the indorsements thereon, and for taking the consent of the protectors of settlements of land held by copy of court roll, where such consents shall not be given by deed, and for taking surrenders by which dispositions shall be made under the said act by tenants in tail of lands held by copy of court roll, and for entries of such surrenders, or the memorandums thereof, on the court rolls, shall be as follows:—

|                                                                                                                                                                                                                             | £ | s. | d. |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|----|----|
| For the indorsements on the deed of the memorandum of<br>production, and memorandum of entry on court rolls, to be<br>signed by the lord steward or deputy steward, each indorse-<br>ment of memorandum 5s., together ..... | 0 | 10 | 0  |
| For the entries on the court rolls of deeds, and the indorse-<br>ments thereon, at per folio of seventy-two words.....                                                                                                      | 0 | 0  | 6  |
| For taking the consent of each protector of settlement of<br>lands .....                                                                                                                                                    | 0 | 13 | 4  |
| For taking the surrender by each tenant in tail of lands ....                                                                                                                                                               | 0 | 13 | 4  |
| For entries of such surrenders, or the memorandums thereof,<br>on the court rolls, at per folio of seventy-two words .....                                                                                                  | 0 | 0  | 6' |

\* It will be seen that the table of fees does not include the affidavit verifying the certificate, &c.

ACKNOWLEDG-  
MENTS BY MAR-  
RIED WOMEN.

*AFFIDAVIT verifying the Certificate of Acknowledgment, &c., according to the Form prescribed by the Rule of the Court of Common Pleas, and thereby directed to be made by some practising Attorney or Solicitor, and to be sworn before a Judge of the Court of Common Pleas, or a Commissioner appointed for taking Affidavits in the said Court.*

**In the Common Pleas,**

A. B., of —, in the — of —, gentleman, one of the attornies [*or solicitors*] of the Court of —, maketh oath and saith, that he knows [*wife*], the wife of [*husband*], in the certificate hereunto annexed mentioned; and that the acknowledgment therein mentioned was made by the said [*wife*], and the certificate signed by the Judge [*or Master*, or by A. B., of &c., and C. D., of &c., the Commissioners in the said certificate mentioned] on the day and year therein mentioned, at —, in the — of —, in the presence of this deponent; and that at the time of making such acknowledgment the said [*wife*] was of full age and competent understanding; and that the said [*wife*] knew the said acknowledgment was intended to pass her estate in the premises respecting which such acknowledgment was made: [(a) And this deponent further saith, that, to the best of this deponent's knowledge and belief, neither of the said Commissioners is [*or*, the said A. B., *or* the said C. D., one of the said Commissioners, is not] in any manner interested in the transaction giving occasion for such acknowledgment, or concerned therein as attorney, solicitor, or agent, or as clerk to any attorney, solicitor, or agent so interested or concerned]: And this deponent further saith, that, previous to the said [*wife*] making the said acknowledgment, he this deponent inquired of the said [*wife*] [*or, if more than one,*

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(a) The clause in brackets is to be omitted when the acknowledgment is taken by a Judge or Master.



of each of them the said — and — [the married women] whether she intended to give up her interest in the estates in respect of which such acknowledgment was taken, without having any provision made for her in lieu of, or in return for, or in consequence of her so giving up her interest in such estates; and that, in answer to such inquiry, the said [wife] declared that she did intend to give up her interest in the said estates without having any provision made for her in lieu of, or in return for, or in consequence of her so giving up such her interest; of which declaration of the said [wife], this deponent has no reason to doubt the truth, and verily believes the same to be true [or, declared that a provision was to be made for her in consequence of her giving up such her interest in the said estates: And this deponent further saith, that, before her acknowledgment was so taken, he was satisfied, and does now verily believe, that such provision has been made by deed [or writing], [or, that the terms thereof have been reduced into writing], and that such deed [or, writing] has been produced to the said Judge [or Master, or Commissioners]:] And lastly, this deponent saith, that it appears by the deed acknowledged by the said [wife], that the premises wherein she is stated to be interested are described to be in the parish [or place] of — [or, parishes or places of — and —], in the county of — [or, counties of — and —, as the case may be.]

Sworn, &c.

N. B.—When the whole of the facts cannot be spoken to by one deponent, variations may be made to enable more than one deponent to state their respective parts of the affidavit.

The Court of Common Pleas has since issued a Supplemental Rule, explanatory and corrective, in regard to a few particulars, of the General Rule of Hilary Term, 1834.

“TRINITY TERM, 1834.

“It is ordered, that, from and after the last day of this term, where such parts of the affidavit verifying the certificate of acknowledgment, taken in pursuance of the late act of Parliament respecting fines and recoveries, as state ‘the deponent’s knowledge of the party making the acknowledgment, and her being of full age,’ cannot be deposed to by a commissioner, or by an attorney or solicitor, the same may be deposed

Supplemental  
rule of the Court  
of Common  
Pleas relating to  
acknowledg-  
ments.

ACKNOWLEDG-  
MENTS BY MAR-  
RIED WOMEN.

to by some other person whom the person before whom the affidavit shall be made shall consider competent so to do.

\* *Sic.*

“And it is further ordered, that, where more than one married woman shall at the same time acknowledge the same deed respecting the same property, the fees directed by the said\* rules to be taken shall be taken for the first acknowledgment only; and the fees to be taken for the other acknowledgment or acknowledgments, how many soever the same may be, shall be one half of the original fees; and so also where the same married woman shall at the same time acknowledge more than one deed respecting the same property.

“And where, in either of the above cases, there shall be more than one acknowledgment, all such acknowledgments may be included in one certificate and affidavit.

“In every case the acknowledgment of a lease and release shall be considered and paid for as one acknowledgment only.”

Remarks upon  
affidavit verify-  
ing certificate,  
&c.

The affidavit should be on parchment and stamped with a duty of two shillings and sixpence.

The Court of Common Pleas seems to have extended the affidavit to many particulars which evidently were not in the contemplation of the framers of the act. The deponent is not only required to ascertain the age and competency of the acknowledging party; but to push his inquiries into the existence and nature of any compensating provision which may have formed her inducement to join in the conveyance. He is also to see that the Judge, Master, or Commissioners affix their names to a written statement of the particulars of the compensating provision, *though such document clearly possesses no binding efficacy on the party whose intentions or agreement it professes to describe*; and all this is crowded into an affidavit which the act has required for the mere purpose of “verifying the certificate and the signature thereof by the party by whom the same shall purport to be signed.” In issuing the rules in question, the Judges of the Common Pleas have certainly put a most liberal construction upon the passages in the act, which confer their regulating power; and in the exercise of that power have fettered the taking of acknowledgments with restrictions at once inconvenient and ineffectual for the purpose at which they aim. See some observations in Hayes's *Introd. Conv. Append.* 275.

As to acknow-  
ledgment in re-  
spect of trust  
estates.

It is observable that the acknowledgment is not dispensed with by the act, or the examination enjoined by the Court, at all varied by the circumstance of the conveyance being made by the married woman in the character of *trustee*.

Points respect-  
ing the acknow-  
ledgment.

The rule of Court allows a month for the filing of the certificate after the taking of the acknowledgment; but no time ought to be lost in completing the formalities, especially that of swearing the affidavit, which

might otherwise be prevented by the death or incapacity of the intended deponent, and then, if the acknowledging party also should die before the defect could be repaired by a new acknowledgment, the conveyance would be defeated. In any other case the death of the acknowledging party, before the filing of the certificate, would not be material. No limit is assigned to the interval between the execution of the deed and the acknowledgment, during which however it is wholly inoperative as a conveyance by the married woman. Of course, a purchaser would not pay his money until the acknowledgment has been taken and the certificate duly filed of record, which are evidently acts to be performed by and at the expense of a vendor. A copy of the certificate so filed is made by the act conclusive evidence of the sufficiency of the acknowledgment, but of that only; and, in tendering the deed in evidence, the execution must be proved in the usual manner. In fact, the conveyance itself does not denote even the acknowledgment to have been perfected by the filing of the certificate; for though it bears on its face or back the Judge's, Master's, or Commissioners' memorandum, there is no evidence that any thing further was done. Every acknowledged deed, therefore, should be accompanied by a copy of the certificate filed of record, in the absence of which, the sufficiency of the conveyance in point of execution ought never to be assumed.

It is observable, that the certificate of acknowledgment is not subject to any stamp. Whether the memorandum on the deed is to be included in the computation of its contents in regard to the stamp duty seems questionable. The prudent course is to impress the deed with a stamp sufficient to cover the memorandum, though it is not improbable that the Courts, adhering to the strict construction which they have uniformly given to the stamp acts, considered as penal laws, would hold this new appendage to the deed not to be matter "put or indorsed thereon," within the meaning of the stamp act. (*Vide ante*, Vol. 8, p. 208.)

Whether memorandum of acknowledgment is to be included in stamp impressed upon the acknowledged deed.

GRANT BY TE-  
NANT IN TAIL  
IN REMAINDER.

GRANT at Common Law (a) by Tenant in TAIL  
IN REMAINDER, with the CONSENT of the PRO-  
TECTOR, to USES to PREVENT DOWER, (to be  
inrolled).

Parties.

Recital of settle-  
ment creating  
entail.

**THIS** INDENTURE, made the — day of —, BE-  
TWEEN [*tenant in tail*], of &c., of the first part; [*protector*],  
of &c., of the second part; and [*grantee to uses*], of &c., of  
the third part. WHEREAS, by indentures of lease and release,  
bearing date respectively on or about the — and — days  
of —, 18—, the release being made between [*settlor*], of &c.,  
of the first part; the said [*protector*] of the second part; [*pro-  
tector's then intended wife*], of &c., spinster, of the third  
part; and [*trustees*], of &c., of the fourth part, (being the set-  
tlement executed previously to the marriage of the said [*pro-  
tector*] and [*wife*], his wife); the said [*settlor*] did convey  
and assure the — and hereditaments hereinafter described  
and hereby granted, or intended so to be, To the uses follow-  
ing (to take effect after the solemnization of the said then in-  
tended marriage), that is to say, To the use of the said [*pro-  
tector*], during the term of his natural life, with remainder to  
the use of the said [*protector's wife*], during the term of  
her natural life, with remainder (subject to a limitation to  
trustees for preserving contingent remainders), To the use  
of the first son of the said [*protector*] on the body of the  
said [*wife*], his then intended wife, to be begotten, and the  
heirs of the body of such first son lawfully issuing, with such  
remainders over as are therein expressed. AND WHEREAS  
the said [*tenant in tail*] is the first son of the said marriage.  
AND WHEREAS the said [*tenant in tail*] is desirous to con-  
vey and assure the remainder in fee simple in the heredita-

—that grantor  
was the eldest  
son, &c.

---

(a) The objection usually made to a remainder-man conveying by grant at common law, namely, that it imposes the necessity of proving the subsistence of the particular estate, does not apply where the owner of such estate joins in the character of protector.



GRANT BY TE-  
NANT IN TAIL  
IN REMAINDER.

*Testatum.*

Tenant in tail,  
with the consent  
of protector,  
grants,

Remainder.

*Habendum;*

To uses for pre-  
venting dower.

ments so limited to him as aforesaid to the uses hereinafter expressed, and the said [*protector*], as the protector of the hereinbefore recited settlement, hath agreed to concur in these presents for the purpose of testifying his consent thereto. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the desire and agreement aforesaid, and for the purpose of defeating and destroying all estates tail of the said [*tenant in tail*], and all estates, rights, titles, interests, and powers, to take effect after the determination or in defeazance of the same estates tail, the said [*tenant in tail*], with the consent and approbation of the said [*protector*], as the protector of the hereinbefore recited settlement, testified by his execution hereof, *Doth* by these presents (*b*) grant, bargain, sell, and confirm unto the said [*grantee to uses*], and his heirs, ALL THAT the inheritance in remainder expectant on the determination of the several estates for life, so as aforesaid successively limited to the said [*protector*] and [*wife*], his wife, respectively, or such of the same estates as may now happen to be subsisting of and in ALL THAT (*parcels with appropriate general words*); And all the estate, right, title, interest, property, remainder, reversion, claim, and demand whatsoever, both at law and in equity, of him the said [*tenant in tail*], in, to, out of, and upon the said — hereditaments and premises; To HAVE AND TO HOLD the said remainder of and in the said — and hereditaments hereinbefore described, and all and singular other the premises hereby granted or otherwise assured, or intended so to be, unto the said [*grantee to uses*] and his heirs for ever, (free and absolutely discharged of and from all estates tail of the said [*tenant in tail*] in the said hereditaments, and all estates, rights, titles, interests, and powers, to take effect after the determination or in defeazance of the same estates tail), To the uses hereinafter expressed and declared concerning the same (that is to say) (*uses as in precedent, ante, p. 476*). IN WITNESS, &c.

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(*b*) The nominal pecuniary consideration is omitted, in order to prevent the possibility of the conveyance being held to take effect as a bargain and sale.

RELEASE OF  
COPYHOLDS BY  
EQUITABLE TE-  
NANT IN TAIL.

RELEASE *in Fee* by EQUITABLE TENANT *in Tail*  
*in Possession of Copyholds (a).*

Parties.

Recital of marriage settlement creating equitable entail.

**THIS INDENTURE**, made the — day of —, 18—, BETWEEN [*tenant in tail*], of &c., of the one part; and [*releasee*], of &c., of the other part. WHEREAS, by an indenture bearing date on or about the — day of —, made between [*father of tenant in tail*], late of —, of the first part; [*mother of tenant in tail, by maiden name*], afterwards the wife of the said [*father*], of the second part; and [*trustees*], of &c., of the third part, (being the settlement executed previously to the marriage of the said [*father*] and [*mother*], his late wife, deceased); the said [*father*], in consideration of the marriage then intended (and which was shortly afterwards solemnized) between him and the said [*mother, by maiden name*], covenanted with the said [*trustees*] and their heirs to surrender into the hands of the lord

Mode of assurance for barring equitable entails.

(a) By the recent statute (*ante*, p. 385), equitable tenants in tail in copyholds are enabled to dispose of their lands by *surrender or by deed*; which deed, by the 53rd section, must be such as would be adapted to their estate if it were of freehold tenure. Now, as an equitable tenant in tail of freeholds is required to convey by the same assurance as if his estate were legal, it follows that an equitable tenant in tail of copyholds, electing to bar the entail by deed, should convey by lease and release, or some other mode of assurance, adapted to convey a fee simple in possession or remainder (as the case may be) in *freehold* lands. The present deed and the lease for a year should be entered on the court rolls, but need not be inrolled in Chancery. The lease and release will each require a common deed stamp of 35s. If the equitable tenant in tail had a remainder only, (especially if the prior tenant for life concurred in the character of protector,) the deed might properly assume the form of a grant of a remainder at common law, as in the last precedent.

Where the equitable entail is in a married woman, who joins with her husband in barring it *by surrender*, she is (by the 90th section) to be separately examined as in the case of a surrender of a legal estate; but where they bar it *by deed*, an acknowledgment is necessary, as in the case of a conveyance of freeholds by a married woman. (*Vide ante*, p. 478).

of the manor of —, ALL THAT (*describe parcels*), together with all appurtenances to the said premises belonging, to the uses following, that is to say, *To the use* of the said [*father*] during the term of his natural life, and, after his decease, *To the use* of the said [*mother*], the then intended wife of the said [*father*], during the term of her natural life, and, after her decease, *To the use* of all and every the child and children of the said then intended marriage, and the heirs of his, her, and their body and respective bodies lawfully issuing, if more than one, as tenants in common, with such remainders over as are therein expressed. AND WHEREAS the said [*tenant in tail*] is the only child of the said marriage: AND WHEREAS the said [*father*] and [*mother*] are both departed this life: AND WHEREAS the said [*father*] did not in his lifetime surrender the said copyhold — and hereditaments to the uses mentioned in the hereinbefore recited indenture, pursuant to his covenant therein contained (*b*). NOW THIS INDENTURE WITNESSETH, that, for the purpose of defeating and destroying all estates tail in equity or otherwise of the said [*tenant in tail*] in the said copyhold — and hereditaments, and all estates, rights, titles, interests, and powers to take effect after the determination or in defeazance of the same estates tail, and in order to limit and assure the inheritance in fee simple in the same hereditaments to the use hereinafter expressed, the said [*tenant in tail*] *Doth* by these presents grant, bargain, sell, and release unto the said [*releasee*] and his heirs, (in the actual possession of the said [*releasee*] now being by virtue of a bargain and sale for one year made to him by the said [*tenant in tail*], by an indenture bearing date the day next before the day of the date hereof), ALL AND SINGULAR the — hereditaments and premises hereinbefore described, and all other the copyhold hereditaments and premises, if any, comprised in the hereinbefore recited indenture, or expressed or intended so to be, with their and every of their appurtenances; And all the estate, right, title, interest, property, possession, benefit, claim,

RELEASE OF  
COPYHOLDS BY  
EQUITABLE TE-  
NANT IN TAIL.

That releasor  
was the only  
child of the mar-  
riage, &c.

*Testatum.*

Tenant in tail  
conveys to re-  
leasee,

Parcels.

All the estate,  
&c.

(*b*) It is probable that in such a case the legal inheritance would descend to the equitable tenant in tail. This fact, as it would not vary the form of the assurance, is not recited.

RELEASE OF  
COPYHOLDS BY  
EQUITABLE TE-  
NANT IN TAIL.

*Habendum.*

To the use of re-  
lessor in fee.

and demand whatsoever, both at law and in equity, of the said [*tenant in tail*], in, to, and upon the said — hereditaments and premises; To HOLD the said — hereditaments and premises hereinbefore described, and all and singular other the premises hereby released or otherwise assured or intended so to be, (free and absolutely discharged of and from all estates tail of the said [*tenant in tail*] in the same hereditaments, and all estates, rights, titles, interests, and powers to take effect after the determination or in defeazance of the same estates tail,) unto the said [*releasee*] and his heirs for ever; To THE USE of the said [*tenant in tail*], his heirs and assigns, for ever; and to or for no other use, intent, or purpose whatsoever. IN WITNESS, &c.

BARGAIN AND  
SALE AND  
ASSIGNMENT  
BY TENANT IN  
TAIL.

BARGAIN AND SALE of *Lands by a* TE-  
NANT IN TAIL, and ASSIGNMENT of ENTAILED  
MONEY (*a*) (*to be inrolled*). *The Lands are*  
*limited simply in TRUST for the BARGAINOR, and*  
*the Monies are to be retained by the TRUSTEES*  
*upon the Trusts declared by a Marriage SET-*  
*TLEMENT of even Date. (VARIATION where the*  
*Trust of the Money is simply for the As-*  
*SIGNOR).*

**THIS** INDENTURE, made the — day of —, in  
the year of our Lord 18—, BETWEEN [*tenant in tail*], of &c.,

Parties.

As to acquiring  
the absolute in-  
terest in entailed  
money.

(*a*) Formerly, in order to enable the tenant in tail of lands to be purchased to destroy the entail and remainders, it was necessary to lay out the money, and then to suffer a recovery of the lands so purchased. To effect this scheme, an estate was often borrowed for the occasion, which, on the recovery being suffered, was re-conveyed to the owner in exchange for the ostensible purchase-money. To remedy this inconvenience, Lord *Eldon's* Act of 39 & 40 Geo. 3, c. 56, (amended by the act of 7 Geo. 4, c. 45), empowered the Court of Chancery on petition to order payment of the money to the tenant in tail. The expense and delay attending an application to the Court, however, were such as greatly to frustrate the object of these well-meant enactments; and there-



of the one part; and [trustees], of &c., of the other part. WHEREAS [grandfather], late of —, deceased, the grandfather of the said [tenant in tail], being seised to him and his heirs for an estate in fee simple in possession of the hereditaments marked (B.) hereunder written, in and by his last will and testament in writing, bearing date on or about the — day of —, duly executed and attested for the devise of freehold estates, gave and devised all his freehold messuages, lands, and hereditaments, To the use of his son [name], the father of the said [tenant in tail], during his natural life, and after his decease (subject to an estate limited to trustees to preserve contingent remainders, and which is now determined,) to the use of all and every the child and children of the testator's said son, and the heirs of his, her, and their body or respective bodies, with such remainders over as are therein mentioned; And the testator directed the executors of his said will to lay out and invest the sum of £—— in the purchase of freehold lands and hereditaments, to be settled to the uses thereinbefore expressed concerning his freehold hereditaments; And until a convenient purchase could be made, the said testator directed his said executors to invest the said trust monies in real or government securities; And the said testator appointed [names], of &c., executors of his said will. AND WHEREAS the said testator departed this life without revoking or altering his hereinbefore recited will, and on the — day of — the same was duly proved by the executors therein named in the Prerogative Court of the Archbishop of Canterbury: AND WHEREAS the said [devisee for life] lately departed this life: AND WHEREAS the said [tenant in tail] is the only child of the said [devisee for

BARGAIN AND  
SALE AND  
ASSIGNMENT  
BY TENANT IN  
TAIL.

Recital of will  
creating entail.

—Death of tes-  
tator, &c.

—Death of devi-  
see for life, and  
that bargainor  
was his only  
child.

for the framers of the recent Fine and Recovery Act have wisely substituted the more simple machinery of "an assignment by deed," superadding no other requisite than enrolment. *Vide ante*, pp. 394, 413. As a man cannot assign to himself, it is necessary that the assignment should be made to a trustee, either upon trust to permit the assignor to receive the money, or else upon trust to re-assign to him, both which modes are exemplified by the notes to this precedent and the next precedent. The precedent in the text exhibits the farther variety of a case in which the assignees retain the funds in the capacity of trustees. The variation occasioned by the circumstance of their holding it for their own benefit would be very slight.

BARGAIN AND  
SALE AND  
ASSIGNMENT  
BY TENANT IN  
TAIL.

—That money  
had not been  
laid out.

—Of the bar-  
gainor's inten-  
tion to convey.

*Testatum.*

Tenant in tail  
bargains and  
sells freeholds.

*life*]: AND WHEREAS the said [*executors*] being unable to procure a convenient purchase for the investment of the said trust monies, pursuant to the direction of the hereinbefore recited will, laid out and invested the same in the purchase of the several stocks, funds, and securities specified in the schedule marked (B.), hereunder written. AND WHEREAS (*b*) the said [*tenant in tail*] is desirous of vesting the absolute fee simple in the hereditaments devised by the hereinbefore recited will, and also the absolute interest in the said stocks, funds, and securities, in the said [*trustees*] upon the trusts hereinafter declared or referred to concerning the same respectively. NOW THIS INDENTURE WITNESSETH, that, in order to carry into effect such desire and intention of the said [*tenant in tail*], and to defeat and destroy all estates tail of the said [*tenant in tail*] in the hereditaments hereinafter described or referred to, and all estates, rights, titles, interests, and powers, to take effect after the determination or in defeazance of such estates tail, and for the purpose of assuring and limiting the inheritance in fee simple in possession of and in the same hereditaments in the manner hereinafter expressed, and in consideration of the sum of 10s. (*c*) of lawful money of Great Britain and Ireland, paid by the said [*trustees*] to the said [*tenant in tail*], at or immediately before the execution of these presents (the receipt whereof is hereby acknowledged), he the said [*tenant in tail*] *Doth*, by these presents, bargain, sell, and dispose of, unto the said [*trustees*] and their heirs, All and singular the messuages,

Variation in recital where the trust of the entire property is simply for the assignor.

(*b*) If the trust is to be simply for the assignor, substitute for the recital in the text the following:—

“AND WHEREAS the said [*tenant in tail*] is desirous of acquiring the absolute inheritance in fee simple in the hereditaments devised by the hereinbefore recited will, and also of acquiring the absolute interest in and obtaining a transfer of the stocks, funds, and securities specified in Schedule (B.) as aforesaid, or any other stocks, funds, or personal estate which may happen to be subject to the hereinbefore recited trusts of the said will.”

(*c*) The insertion of the nominal pecuniary consideration is important, being essential to the efficacy of the instrument as a *bargain and sale* inrolled under stat. 27 Hen. 8, c. 16.

BARGAIN AND  
SALE AND  
ASSIGNMENT  
BY TENANT IN  
TAIL.

---

lands, tenements, and hereditaments, specified in the schedule marked (A.), hereunder written, and all other the hereditaments, if any, wherein the said [*tenant in tail*] hath any estate tail, either in possession, reversion, remainder, or expectancy, under or by virtue of the hereinbefore recited will, together with all the rights, members, and appurtenances to the said hereditaments, or any part thereof, belonging or appertaining; And all the estate, right, title, interest, property, possession, inheritance, benefit, claim, and demand whatsoever of him the said [*tenant in tail*], in, to, out of, and upon the said hereditaments and premises; **TO HAVE AND TO HOLD** the said messuages, lands, tenements, hereditaments, and premises hereby bargained and sold, or intended so to be, unto the said [*trustees*] and their heirs for ever, freed and absolutely discharged of and from all estates tail of the said [*tenant in tail*], and all estates, rights, titles, interests, and powers to take effect after the determination or in defeazance of the said estates tail; **TO THE USE** of the said [*trustees*], their heirs and assigns for ever; *Upon trust*, nevertheless, for and for the only benefit of the said [*tenant in tail*], his heirs and assigns, for ever; and to, upon, or for no other use, trust, intent, or purpose whatsoever. **AND THIS INDENTURE ALSO WITNESSETH**, that, in order further to carry into effect the hereinbefore recited desire and intention of the said [*tenant in tail*], and to defeat and destroy all estates tail of the said [*tenant in tail*], by virtue of the hereinbefore recited will or otherwise, in the trust funds or securities hereby assigned or intended so to be, and all estates, rights, titles, interests, and powers to take effect after the determination or in defeazance of such estates tail, and to entitle and enable the said [*trustees*] (d) forthwith to obtain a transfer of the said trust funds and securities to be held by them upon the trusts and in the manner hereinafter expressed or referred to, the said [*tenant in tail*] *Doth* by these presents assign, transfer, and set over unto the said [*trustees*], their executors, administrators, and assigns, All those the several stocks, funds, and securities,

*Habendum to trustee, in trust for the bargain-or.*

*Further testament.*

*Tenant in tail assigns entailed monies to trustees.*

(d) If it is intended that the trust shall be simply for the assignor, instead of "[*trustees*]" say "[*assignor*]," and omit the words—"to be held by them upon the trusts and in the manner hereinafter expressed or referred to."

BARGAIN AND  
SALE AND  
ASSIGNMENT  
BY TENANT IN  
TAIL.

*Habendum* upon  
the

—Trusts of con-  
temporaneous  
settlement,

Receipts of trus-

or parts or shares of stocks, funds, and securities, specified in the schedule marked (B.) hereunder written, and all other the legacies, monies, stocks, and securities (if any) which are subject to the hereinbefore recited trust or direction for investment, contained in the said will of the said [*testator*], deceased, and the dividends, interest, and annual produce of the same respectively; And all the right, title, interest, benefit, claim, and demand whatsoever of him the said [*tenant in tail*], in and to the said hereby assigned premises; To HAVE, RECEIVE, AND TAKE the said monies, stocks, funds, securities, and premises hereby assigned or intended so to be, unto the said [*trustees*], their executors or administrators (*e*), upon the trusts, and to and for the intents and purposes, and subject to the powers, provisoes, declarations, and agreements expressed and declared concerning the same in and by an indenture of settlement (*f*) already prepared, and intended to bear even date with these presents, and to be executed immediately after the execution hereof, and expressed or intended to be made between the said [*tenant in tail*] of the first part, [*intended wife*], or &c., the intended wife of the said [*tenant in tail*], of the second part, and the said [*trustees*] of the third part, and upon, to, or for no other trust, intent, or purpose whatsoever: PROVIDED ALWAYS and

(*e*) If it is intended that the trust shall be simply for the assignor, say—

Variation, where  
the trust is sim-  
ply for the as-  
signor.

“In trust, nevertheless, for the said [*tenant in tail*], his executors, administrators, or assigns, and to the intent and purpose that the said stocks, funds, and securities hereby assigned or intended so to be, shall and may be forthwith transferred to the said [*tenant in tail*], his executors, administrators, or assigns, for his or their own use and benefit, as part of his personal estate; Provided always and it is hereby declared, that the receipt of the said [*tenant in tail*], his executors, administrators, or assigns, for the said stocks, funds, and securities so to be transferred to him or them as aforesaid, shall fully and effectually discharge the executors of the hereinbefore recited will, or other the person or persons transferring the same, from all responsibility whatsoever in respect thereof.”

(*f*) See the precedent of a settlement of monies arising under the trusts of a contemporaneous conveyance. *Ante*, p. 421.



it is hereby declared, that the receipt or receipts of the said [trustees], or the survivor of them, his executors or administrators, for the said monies, stocks, funds, and securities hereby assigned or intended so to be, and which shall be paid or transferred to them or him under or by virtue of these presents, shall effectually exonerate and discharge the said [executors], or other the person or persons paying or transferring the same, from all obligation to inquire into or to see to the application thereof, and from all other responsibility whatsoever in respect of the same, any rule of law or equity to the contrary notwithstanding. IN WITNESS, &c.

BARGAIN AND  
SALE AND  
ASSIGNMENT  
BY TENANT IN  
TAIL.

tees to be good  
discharges.

SCHEDULE (A.), referred to in the preceding indenture,  
(*specify lands in the usual manner*).

SCHEDULE (B.), referred to in the preceding indenture,  
(*specify securities in the usual manner*).

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ASSIGNMENT by TENANT IN TAIL in Remainder, with the CONSENT of the PROTECTOR of the SETTLEMENT, of PERSONAL ESTATE directed to be LAID OUT in LAND, in order that the same may be immediately RE-ASSIGNED to the Assignor. Fund declared to be Personal Estate.

ASSIGNMENT OF  
ENTAILED  
MONEY WITH  
CONSENT OF  
PROTECTOR.

THIS INDENTURE, made the — day of —, 18—, BETWEEN [tenant in tail], of &c., of the first part; [protector], of &c., of the second part; and [trustee], of &c., of the third part. WHEREAS [testator], of &c., in and by his last will and testament in writing, bearing date on or about the — day of —, after bequeathing certain specific and pecuniary legacies, gave all the residue of his personal estate unto [executors], of &c., their executors or administrators, Upon trust to lay out and invest the same in the purchase of freehold lands of inheritance, and which the said testator directed should be conveyed To the use of his nephew the said [protector], during his life; And after his decease, To the use of the first and every other son of the said [protector] successively in tail male, with such remainders over as in the said will are expressed; And the said [testator] di-

Parties.

Recital of will  
creating entail.

ASSIGNMENT OF  
ENTAILED  
MONEY WITH  
CONSENT OF  
PROTECTOR.

—Death of testator.

—That person-  
alty had not been  
laid out in land.

—That tenant  
in tail was desirous of acquiring the absolute interest, and that protector had consented.

*Testatum.*

Tenant in tail,  
with the consent  
of the protector,  
assigns,

rected, that, until the said personal estate should be laid out pursuant to the said trust, the same should be invested in the names of the said executors in government or real securities, the dividends or interest whereof should from time to time be paid to the persons who would have been entitled to the rents and profits of the freehold hereditaments to be purchased as aforesaid if the same had been so purchased. AND WHEREAS the said testator departed this life on the — day of —, and his said will was shortly afterwards proved by the said executors therein named in the Prerogative Court of the Archbishop of Canterbury. AND WHEREAS the residue of the personal estate of the said [testator], after payment and satisfaction thereof of his debts and funeral and testamentary expenses, and the legacies bequeathed by his said will, amounted to the clear sum of 3550*l.*, whereof the sum of 1500*l.* consisted of a mortgage debt for the said sum and interest, secured by indentures of lease and release, bearing date respectively on or about the — and — days of —, made between [mortgagor], of &c., of the one part; and the said [testator] of the other part; and the sum of 2000*l.*, the residue of the said sum of 3550*l.*, was invested by the said [executors] in the purchase of 2360*l.* Three Pounds per centum Reduced Annuities, which are now standing in their names in the books of the Governor and Company of the Bank of England, no part of the said residuary personal estate having been laid out by the said executors in the purchase of lands or other freehold hereditaments, pursuant to the trusts and directions of the hereinbefore recited will. AND WHEREAS the said [tenant in tail] is desirous to acquire the absolute beneficial interest in the said trust funds, subject to the life interest of the said [protector], and the said [protector], as the protector of the entail created by the hereinbefore recited will, hath consented to join herein for the purpose of enabling him so to do. NOW THIS INDENTURE WITNESSETH, that, for the purpose aforesaid, and in order to defeat and destroy all estates tail of the said [tenant in tail] in the said personal estate, funds, securities, and premises, hereby assigned or intended so to be, and all estates, rights, titles, interests, and powers to take effect after the determination or in defeazance of estates tail, and in consideration of the sum of 10*z.* of lawful money

of Great Britain and Ireland, paid by the said [trustee] to the said [tenant in tail] at or immediately before the execution of these presents, the receipt whereof is hereby acknowledged, he the said [tenant in tail], with the consent and approbation of the said [protector], testified by his execution hereof, DOTH by these presents assign, transfer, and set over unto the said [trustee], his executors, administrators, and assigns, ALL AND SINGULAR (a) the said principal sum of 1500*l.*, secured by the hereinbefore mentioned indentures of lease and release or mortgage, and also the said sum of 2360*l.* Three Pounds per centum Reduced Annuities, and all other the residuary personal estate bequeathed in or by the hereinbefore recited will, and the stocks, funds, and securities on which any part of the said personal estate already hath been or at any time or times hereafter shall be laid out or invested, and the dividends, interest, and annual produce henceforth to arise therefrom, subject nevertheless, to the life interest of the said [protector] in the said trust monies, stocks, funds, and securities; And all the right, title, interest, benefit, claim, and demand whatsoever of him the said [tenant in tail] in, to, and upon the said trust monies, securities, and premises; To HAVE, RECEIVE, AND TAKE the said trust monies, stocks, funds, and securities, and other the premises hereby assigned or intended so to be (free and absolutely discharged of and from all estates tail of the said [tenant in tail], and all estates, rights, titles, interests, and powers to take effect after the determination or in defeazance of the same estates tail (but subject and without prejudice as aforesaid) unto the said [trustee], his execut or administrators, IN TRUST, nevertheless, for the said [tenant in tail], his executors or administrators, and to the intent that the said [trustee], his executors or administrators, do and shall forthwith in and by an indenture already prepared and engrossed, and intended to be indorsed on these presents, and to be made between the said [trustee] of the one part, and the said [tenant in tail] of the other part, assign and assure the said trust monies, stocks, funds, securities, and premises hereby assigned or intended so to be, (subject, nevertheless, to the hereinbefore mentioned life in-

ASSIGNMENT OF  
ENTAILED  
MONEY WITH  
CONSENT OF  
PROTECTOR.

Personal estate  
bequeathed by  
the will.

And all the  
right, &c.

Habendum to  
assignee,  
in trust to re-  
assign the funds  
to assignor.

(a) A specification of the funds clearly is not essential, and, indeed, would be impracticable where the state of the funds is not known to the assignor.

ASSIGNMENT OF  
ENTAILED  
MONEY WITH  
CONSENT OF  
PROTECTOR.

Declaration that  
the assigned  
funds shall be  
deemed to be  
personal estate.

terest of the said [*protector*],) unto the said [*tenant in tail*], his executors or administrators, for his and their own absolute use and benefit, and upon or for no other trust, intent, or purpose whatsoever; AND the said [*protector*] and [*tenant in tail*], according to their respective interests aforesaid, hereby declare and direct that the said trust funds and premises shall and may from time to time henceforth be and be deemed to be of the nature and quality of personal estate, to and for all intents and purposes whatsoever, any rule of equity to the contrary notwithstanding; And that the same or any part thereof shall not be laid out by the said [*executors*] in the purchase of lands or hereditaments, as directed by the hereinbefore recited will (*b*). IN WITNESS, &c.

As to declaring  
the fund to be  
personal estate.

(*b*) Where a tenant in tail in remainder, with the consent of the protector, assigns a fund of this nature for the purpose of acquiring the absolute reversionary interest therein, the effect of the assignment is merely to destroy the entail and remainders, leaving the fund still impressed with the qualities of real estate, and liable to be invested in due course for the benefit of the respective *cestuis que trust*. The trustees, however, ought to have notice of the assignment, in order that their conveyances of lands, purchased under the trust, may be framed accordingly, i. e. that a remainder in fee-simple, instead of a remainder in tail, may be limited to the present assignor. It is, however, in the power of *all* the parties beneficially concerned in interest, to elect to take the fund in its actual state; and an intimation of such their intention to the trustees would preclude the latter from proceeding in their trust to invest in purchases of land. Even where the parties do not concur in any such intimation, the assignor tenant in tail ought to declare what is to be the quality of the fund, as between his own representatives, or rather ought to insert such a declaration, if its present constructive character as real estate is to be changed. This would regulate the nature of the property for the purpose of transmission, until the fund should be actually laid out, but, it is conceived, *no longer*, for it would not prevent the land, *when purchased*, from devolving to the real representatives.

Stamp and in-  
rolment.

The present deed will require only a common deed stamp of 35s. It should be inrolled in Chancery within six calendar months. It clearly is not necessary, though perhaps rather more correct, that the inrolment of the disentailing deed should precede the execution of the re-assignment to the tenant in tail, as the inrolment, when made, has relation back to the execution. (*Vide ante*, p. 396.)



RE-ASSIGNMENT (*to be indorsed on the last Precedent*) for the Purpose of VESTING the absolute reversionary Interest in the ENTAILED Funds in the TENANT in TAIL.

RE-ASSIGN-  
MENT OF EN-  
TAILED MONEY.

**T**HIS INDENTURE, made the — day of —, 18—, BETWEEN the within-named [*trustee*], of the one part, and the within-named [*tenant in tail*], of the other part, WITNESSETH, that, in execution of the trust reposed in the said [*trustee*] by the within-written indenture, in consideration of 10s. of lawful money of Great Britain and Ireland, paid by the said [*tenant in tail*] to the said [*trustee*], at or immediately before the execution of these presents, the receipt whereof is hereby acknowledged, he the said [*trustee*] DOth, by these presents, assign, transfer, and set over unto the said [*tenant in tail*], his executors, administrators, and assigns, all and singular the principal sum of 1500*l.*, secured by the within-mentioned indentures of lease and release or mortgage, and also the within-mentioned sum of 3260*l.* Three Pounds per cent. Consolidated Annuities, and all other the personal estate, stocks, funds, and securities, dividends, interest, and annual income, and other the premises in and by the within-written indenture assigned to or vested in the said [*trustee*]; And all the right, title, interest, benefit, claim, and demand whatsoever of him the said [*trustee*] in, to, out of, and upon the said trust monies, securities, and premises: TO HAVE, RECEIVE, AND TAKE the said trust monies, stocks, funds, securities, and premises hereby assigned or intended so to be, unto the said [*tenant in tail*], his executors, administrators, or assigns, for his or their own absolute use and benefit, as fully and effectually to all intents and purposes as the said [*trustee*] in and by the within-written indenture is empowered to assign and transfer the same, to be held and enjoyed by the said [*tenant in tail*], his executors, administrators, or assigns as personal estate, subject nevertheless to the life interest of the within-named [*protector*] in the said trust monies, stocks, funds, and securities as within expressed. AND

Parties.

Testatum.

Habendum.

Covenant by

RE-ASSIGN-  
MENT OF EN-  
TAILED MONEY.

trustee that he  
has not incum-  
bered.

the said [*trustee*], for himself, his heirs, executors, and administrators, doth hereby covenant with the said [*tenant in tail*], his executors or administrators, that he the said [*trustee*] hath not made, done, executed or permitted any act, deed, matter, or thing whatsoever, by means whereof the said trust monies, stocks, funds, securities, and premises, hereby assigned or intended so to be, are or is charged, incumbered, or in any manner prejudicially affected in title, interest, or otherwise howsoever (a). IN WITNESS, &c.

(a) This deed should bear a 35s. stamp. It need not be inrolled.

IN SATISFAC-  
TION OF WIFE'S  
EQUITY.

SETTLEMENT of a MOIETY of a MARRIED WOMAN'S EQUITABLE CHOSEN ACTION (a) on herself and her CHILDREN, the remaining Moiety being paid to the Husband. Usual Provisions for MAINTENANCE, ADVANCEMENT, VARYING SECURITIES, and APPOINTING NEW TRUSTEES. (A short Form).

Parties.

THIS INDENTURE, made the — day of —, 18—, BETWEEN [*husband*], of &c., and [*wife*], his wife, of the one

As to wife's  
equitable choses  
en action.

(a) The marital claim to equitable choses en action is subject to the wife's equity, which is a right to insist on a proportion (usually one moiety) of the fund being settled on herself and the children. The interests of the parties, however, may happen to have been varied by the provisions of an ante-nuptial settlement, which sometimes expressly declares the husband to be entitled to the wife's future acquisitions of property, real or personal, or both, but more frequently subjects them to the trusts of the settlement, *ut ante*, pp. 143, 176. A settlement made by the husband, in consideration of the intended wife's portion or fortune generally (not future portion or fortune) has been held not to entitle him to her future property. *Vide ante*, p. 16.

It may be observed here, that Lord Brougham, on the authority of an unreported decision of Sir Wm. Grant, has lately reversed the decree of Sir J. Leach, when Vice-Chancellor, in the case of *Fenner v. Taylor*, 1 Sim. 169, which was supposed to establish the doctrine that a married

part; and [*trustees*], of &c., of the other part. WHEREAS [*testator*], late of —, deceased, by his last will, bearing date on or about the — day of —, (among other things), directed his stock in trade, book debts, and the residue of his property of every description to be converted into money, and the money arising therefrom to be laid out in the public funds or on real securities, and his wife [*name*] to take the interest for life, and after her death the principal to be equally divided among his (the testator's) children, and the said testator appointed his wife executrix, and [*executors*] executors of his will. AND WHEREAS the said testator died on the — day of —, without revoking or altering his said will, which, on the — day of — was duly proved by the said executrix and executors in the Prerogative Court of the Archbishop of Canterbury. AND WHEREAS the said testator left three children surviving him, and the said [*wife*] is one of such three children. AND WHEREAS the said testator's wife died on the — day of — last, and at the time of her decease the residuary property of the said testator consisted of the sum of £— Three Pounds per centum Consolidated Annuities, and £— New Three Pounds and Ten Shillings per centum Annuities; and the one-third share of the said [*wife*] therein, after deducting legacy duty and expenses, amounts to the sum of £— Three Pounds per centum Consolidated Annuities, and £— New Three Pounds Ten Shillings per centum Annuities. AND WHEREAS the said [*husband*] and [*wife*], his wife, have mutually agreed

IN SATISFAC-  
TION OF WIFE'S  
EQUITY.

Recital of will  
of wife's father.

—Death of tes-  
tator.

Death of widow,  
and state of the,  
testator's fa-  
mily.

— Agreement  
to settle.

woman could not waive the benefit of an agreement, entered into by her husband after marriage, to settle a proportion of a fund on her. (2 Russ. & Myl. 190). From some observations of the present Master of the Rolls, on the occasion of a petition being presented for the transfer of another portion of the same fund to the husband, it seems that his Honor, though conceiving himself bound to follow the determination of the Lord Chancellor, was not convinced of the soundness of the principle on which the decree of reversal was founded. It certainly would not be safe to consider the doctrine as applying where the children are express objects of the agreement to settle, though inasmuch as the Court would execute an engagement to settle on the wife, such as that in *Fenner v. Taylor*, by directing a settlement on her and the children, the distinction seems to be rather slight. This constituted the gist of Sir J. Leach's objection to the wife's right of waiver.

IN SATISFAC-  
TION OF WIFE'S  
EQUITY.

to settle the sum of £—— Three Pounds per centum Consolidated Annuities, being about one moiety in value of the share to which the said [*wife*] is entitled in the said residuary property as aforesaid, upon the trusts and in manner herein-after particularly specified. AND WHEREAS, in pursuance of the said agreement, previously to the execution of these presents, £—— Three Pounds per centum Consolidated Annuities have been, by the executors of the hereinbefore recited will of the said testator, transferred into the names of the said [*trustees*], and the residue of the said Three Pounds per centum Consolidated Annuities, and also the said New Three Pounds Ten Shillings per centum Annuities, aggregately constituting the share of the said [*wife*] in the said residuary property as aforesaid, has been transferred into the name of the said [*husband*] for his own use, as the said [*trustees*] and [*husband*] respectively hereby acknowledge.

*Testatum.*

Declaration of trusts.

For separate use of wife during joint lives, and, after the decease of either,

In trust for the survivor for life,

And then capital in trust for the children of the wife by her present or any future husband.

NOW THIS INDENTURE WITNESSETH, that, in further pursuance of the said agreement, and in consideration of the premises, it is hereby declared and agreed, by and between the said parties to these presents, that the said [*trustees*], and the survivor of them, his executors or administrators, shall stand possessed of the said sum of £—— Three Pounds per centum Consolidated Annuities, *Upon trust*, from time to time, during the joint lives of the said [*husband*] and [*wife*], his wife, to pay the dividends and annual produce arising therefrom to the said [*wife*] for her separate use, exclusively of her husband the said [*husband*], and so that the same be not subject to his debts, contracts, or engagements, and so that she shall have no power to alien or anticipate the same dividends or annual produce, or any part thereof; and after the decease of either of them the said [*husband*] and [*wife*], his wife, *Upon trust* to pay the said dividends and annual produce unto the survivor of them, for his or her own use, during his or her life; and after the decease of the survivor of them the said [*husband*] and [*wife*], his wife, *Upon trust* to stand possessed of the said sum of £—— Three Pounds per centum Consolidated Annuities, and the stocks, funds, and securities in or upon which the same shall be invested, and the dividends and annual produce arising therefrom, *In trust* for such child, or, if more than one, all such children of the said



[*wife*], by her present or any future husband (*b*), as being a son or sons (*c*) shall attain the age of twenty-one years, or being a daughter or daughters (*c*) shall attain the age of twenty-one years, or be married under that age, the same to be transferred and paid to such child, if only one, or such children equally if more than one, at the age of twenty-one years as to every son, and at that age or marriage as to every daughter, or so soon thereafter as the decease of the survivor of them the said [*husband*] and [*wife*], his wife, will permit. *Provided always*, that the issue of any and every son of the said [*wife*], who shall die under the age of twenty-one years, leaving lawful issue living at his death, shall be entitled, and, if more than one, equally, to the share in the said trust monies, funds, and premises, to which such son respectively would have been entitled if he had attained that age: And in case there shall be no child of the said [*wife*], who being a son shall attain the age of twenty-one years, or die under that age, leaving issue living at his death, or being a daughter shall attain the said age or be married, then *Upon trust* to transfer the said sum of 1000*l*. Three Pounds per centum Consolidated Annuities, or the stocks, funds, and securities in or upon which the proceeds thereof may happen to have been invested, unto the person or persons who at the time of the decease of the survivor of them the said [*husband*] and [*wife*], his wife, would be entitled to her personal estate in case she had then died intestate and without leaving a husband, in the like shares and proportions as such person or persons would be entitled thereto. *Provided always*, and it is hereby declared, that it shall be lawful for the trustees or trustee of this settlement for the time being, after the decease of the survivor of them the said [*husband*] and [*wife*], his wife, to pay and apply the whole or any part of the annual proceeds of the respective presumptive share of every son of the said [*wife*], during his minority, and of every daughter during her minority and discoveriture re-

IN SATISFAC-  
TION OF WIFE'S  
EQUITY.

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Substitution of  
issue of sons  
dying before  
majority.

In default of  
children to next  
of kin of wife.

Provision for  
maintenance  
during minority.

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(*b*) *Vide* observations (*ante*, p. 427) as to letting in children of a future marriage.

(*c*) If any child has already attained the majority, add, in one or both of these places of reference, as occasion may require—"have attained or shall attain," &c.

IN SATISFAC-  
TION OF WIFE'S  
EQUITY.

---

Power of ad-  
vancement.

Power to vary  
securities.

Power of chang-  
ing trustees.

spectively, for his or her respective maintenance and education or benefit, as to such trustees or trustee shall seem proper; And if the whole of such annual proceeds shall not be so applied, then the unapplied part shall be improved at interest, and go in augmentation of the share or respective shares from which the same shall have arisen; but the same accumulated fund shall nevertheless remain applicable, if occasion shall require, to the maintenance and education of the child from whose presumptive share the same shall have arisen; and also that it shall be lawful for the said trustees or trustee, during the lives of the said [*husband*] and [*wife*], his wife, or the survivor of them, with their, his, or her consent in writing, and, after the decease of such survivor, of the sole authority of the said trustees or trustee, to advance and pay any part not exceeding one half of the capital of the vested or presumptive share of every or any of such children respectively, during his or her minority, or, subsequently thereto, in or towards his or her advancement or preferment in the world, in such manner as the said trustees or trustee shall think proper, but the sums so advanced shall be taken as part of the actual or presumptive share of every such child respectively, and be accounted for accordingly. *Provided always*, and it is hereby declared, that it shall be lawful for the said trustees or trustee, at any time or times, and from time to time, with the consent in writing of the said [*husband*] and [*wife*], or the survivor of them, and after the decease of such survivor, then in the discretion of the said trustees or trustee, to sell and dispose of the said sum of £— Three Pounds per centum Consolidated Annuities, and to invest the money to arise from such sale in any other of the stocks or funds or other government securities of the United Kingdom, or upon mortgage of freehold, copyhold, or leasehold estates, to be situate in England or Wales, and from time to time, with such consent and in such discretion as aforesaid, to vary and change the stocks, funds, and securities as often as shall be thought fit; And upon every such variation or transfer of the said trust funds and securities as aforesaid, or otherwise, any person or persons who shall pay any money to the said trustees or trustee for the time being shall be exempt from all responsibility in respect of the application thereof. *Provided also*, and it is hereby further declared, that if the said [*trustees*], or either of them, or any

trustee or trustees to be appointed under this present provision, shall die, or become unwilling or unable to act in the aforesaid trusts, it shall be lawful for the said [*husband*] and [*wife*], or the survivor of them, and, after the decease of such survivor, then for the surviving or continuing trustee for the time being, or, if there be no such trustee, then for the retiring trustee, or, if none, then for the executor or administrator of the last surviving trustee, to appoint any fit person or persons to supply the place or places of such trustees or trustee; and that immediately after every such appointment, the said trust, stocks, funds, and securities shall be transferred, at the costs of the said trust estate, in such manner that the same may vest in such new trustee or trustees jointly with the surviving or continuing trustee or trustees, or in such new trustee or trustees solely, as the case may require, subject to the trusts aforesaid; and every such new trustee, as well before as after such transfer, shall have and may exercise all the powers and authorities hereinbefore contained, as effectually and in the same manner to all intents and purposes as if such trustee had been named herein; And further, that no one or more of the trustees hereby or hereafter to be appointed shall be answerable for any other or others of them, or for any money received under any receipt in which he or they shall join only for conformity, or by any means for involuntary losses; And that every trustee shall be allowed all charges and expenses incurred in the execution of the trusts, including professional charges for business done by any trustee who may happen to be an attorney or solicitor (*d*). IN WITNESS, &c.

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(*d*) *Vide ante*, p. 337.

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SETTLEMENT (*intended to supply the Place of a Will (a) ) of BANK STOCK, MORTGAGE DEBT, (transferred by a separate Deed), and CANAL SHARES, (also separately transferred), in TRUST for the SETTLOR (who is a Widow) for LIFE, and, after her Decease, in TRUST for such PERSONS as she shall APPOINT, and, in default of Appointment, in TRUST for her CHILDREN, (all Daughters), in aliquot Shares, for their SEPARATE and UNALIENABLE USE, for Life, with an ulterior TRUST for their RESPECTIVE CHILDREN, or more remote ISSUE, subject to a POWER of SELECTION reserved to the Parents. The Trusts concerning the Shares subsequent to the first are created by means of a Reference to the Trusts of the first Share (b). PROVISIONS for MAINTENANCE and ADVANCEMENT, and VARYING SECURITIES. (ASSIGNMENT of HOUSEHOLD FURNITURE, &c. in Trust for the SETTLOR for LIFE, and subject thereto upon Trust for SALE, the Proceeds to be applied in paying DEBTS, FUNERAL EXPENSES, &c.)*

Parties.

**THIS INDENTURE**, made the — day of —, 18—,  
BETWEEN [*settlor*], of &c., of the one part, and [*trustees*], of

Comparison of  
the respective  
advantages of

(a) The low rate of duty imposed by the Stamp Act (55 Geo. 3, c. 184) on settlements of personalty, as compared with the several imposts affect-

(b) The precedent in the text exhibits the manner of framing trusts by way of reference, which is seldom required in marriage settlements, where the settled property, instead of being disposed of (as here) in aliquot shares among certain designated objects and their issue, is given simply and absolutely to the children of the contemplated marriage. The present settlement, it will be observed, does not embrace future children, being adapted to the case of a lady of advanced age, whose children are all adult. Besides, her general power of appointment would enable her



&c., of the other part. WHEREAS the said [*settlor*], being possessed of certain Bank Stock and other securities for

Recital of intention to settle.

ing such property in its devolution from a deceased owner under a will or intestacy, offers a strong temptation to persons to dispose of their property among their families by voluntary settlement rather than by will. The expedient, however, is attended with some inconveniences. A will, from its revocable nature, more readily adapts itself to the ever-varying schemes of posthumous disposition, which caprice or a change of circumstances is continually suggesting to the mind of its yet living author, than a deed, which can only be made subservient to such alterations of purpose through the medium of a power of revocation. It often happens, too, that the personalty intended to be disposed of is of such a nature as not to be susceptible of a settlement by deed, as where it is embarked in trade, or is otherwise undergoing frequent fluctuations. Besides, the law does not allow a person to escape from the probate and legacy duties by the mere contrivance of giving to his general disposition the form of a deed instead of a will, without following it up by any one consistent overt dealing with the property. How far the object of making an effective disposition by deed can be rendered compatible with the retention of the possession and ostensible ownership is the great question; and in this view the case of the *Attorney-General v. Jones*, 3 Price, 368, should be carefully scrutinized. The case was as follows:—

disposing of personalty by deed and by will.

An information was filed for the recovery of the sum of 800*l.* for legacy duties, under the 48 Geo. 3, c. 149, charged to be payable on a legacy of 8000*l.*, bequeathed to Ellen Franklin, a stranger in blood to the testator. A verdict was taken for the crown on the trial, subject to the opinion of the Court on the following facts, found by a special verdict:—

Case of *Attorney-General v. Jones*.

“By a certain indenture, bearing date the 25th day of March, 1813, and made between William Franklin, esq., of the one part, and Jones and Bartlett of the other part, it was witnessed, that, in consideration of 10*s.* to him paid, he the said William Franklin did bargain, sell, assign, transfer, and set over unto Jones and Bartlett, all that messuage or tenement of him the said William Franklin, situate in Norton Street, in which he then resided, with the garden and appurtenances; to hold the said messuage or tenement, with the appurtenances, unto Jones and Bartlett, their executors, administrators and assigns, for the residue of the term he had therein, upon the trusts, and to and for the ends, intents, and purposes, and subject to the provisos thereafter declared con-

to extend the settlement to future issue if occasion should require. Where there is no such power, or any power of revocation, the exclusion of after-born children in a settlement should not be too readily determined on.

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money (c), is desirous of settling the same for the benefit of herself and her children, and the other objects of the

cerning the same; and, for the considerations aforesaid, the said William Franklin did bargain, sell, assign, transfer, and set over unto the trustees, their executors, administrators, and assigns, all the 7500*l.* government stock in the Five per cent. Annuities, and all other stocks or funds standing in the name of the said William Franklin, or belonging to him, in the books of the governor and company of the Bank of England, and also all the dividends which might be due thereon at the time of his decease, and all arrears of any pension or pensions which might be then due to the said William Franklin, payable to him by the Government of Great Britain or otherwise, and all books, plate, household furniture, linen, china, glass, and pictures, and all other personal estate whatsoever then belonging to him the said William Franklin, or which should belong to him at the time of his decease; to hold unto the trustees, their executors, administrators, and assigns, nevertheless upon trust for the use, benefit, and advantage of the said William Franklin for and during the term of his natural life; and from and immediately after his decease, upon trust that the trustees should receive the rent and proceeds of the said messuage or tenement and premises, and the interest, dividends, and profits of the said stocks or funds, and apply the same, or so much thereof as they in their discretion should think necessary, for the maintenance and education of Helena commonly called Ellen Franklin, who was born on or about the 7th day of April, in the year of our Lord 1798, until she should have attained the age of twenty-one years, or be married, with the consent in writing of the trustees, or one of them; and from and immediately after the said Helena, otherwise Ellen Franklin, should attain her said age of twenty-one years, or be married as aforesaid, then upon trust that they the trustees should assign the said leasehold premises, and transfer the said stocks and funds, unto her the said Helena, otherwise Ellen Franklin, or stand possessed thereof, and of the said books, plate, household furniture, linen, china, glass, and pictures, and all other the personal estate of the said William Franklin, of what nature or kind soever, or wheresoever, in trust for her the said Helena, otherwise Ellen Franklin, her executors, administrators, and assigns, for her and their own use and benefit; and the trustees were directed to accumulate the unapplied income. And the said indenture contained a proviso, that it should be lawful for the said William Franklin, at any time or times during his life, by any deed

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(c) If household furniture, &c. are included, add—"and other effects."

trusts hereinafter contained. AND WHEREAS, in pursuance of the said intention, the said [settlor] hath this day

That bank stock has been transferred to trustees.

or writing under his hand and seal, or by his last will and testament in writing, or by any codicil or codicils to such will, to be duly executed, to revoke or make void, alter or change, all or any of the respective trust or trusts in and by the said indenture limited or appointed of the said messuage or tenement, with the appurtenances, stocks, or funds, dividends, arrears of pension, books, plate, household furniture, linen, china, glass, and pictures, and all other personal estate whatsoever, so assigned by the said William Franklin as aforesaid. And the said indenture contained powers for the said trustees to appoint other trustees in case they should refuse or decline to act, and to reimburse themselves their expenses; and also a clause of indemnity against the acts of each other. After the execution of the above-mentioned indenture, Franklin, by his will, bearing date the 15th day of April, 1813, and duly executed, reciting the before-mentioned indenture, and the power therein contained for revoking or altering the same, did, by his said will, confirm the said deed in all respects, except where the same was altered by that his will; and he thereby directed that his funeral expenses, the expense of proving his will, and all his just debts, should be defrayed and paid out of the money which should belong to him, and be in his possession, in his dwelling-house, or in the hands of his banker, or the dividends due from the public funds, or the arrears of his pension or allowance from government, at the time of his decease; but in case such money should not prove sufficient for the said purposes, then his executors were to discharge the same by sale or transfer of Three per cent. Consols, or Three per cent. Reduced, belonging to him in the public funds, or such parts thereof as might be necessary for the before-named purposes, and for discharging the legacies thereafter by him bequeathed. Franklin, then, by his will, gave several legacies in stock and money, to the amount of some hundred pounds, and appointed Jones and Bartlett his executors, with the usual powers and indemnities. Franklin died in November, 1813, and the trustees proved the will. At the time of his death, the leasehold messuage remained in the possession of Franklin, together with all the household furniture and effects; and the sum of 7400*l.*, Five per cent. Annuities, (stated in the indenture to be 7,500*l.*), was standing in his name at the Bank of England, having never been transferred to the trustees. Franklin received the half-yearly dividends during his life, and retained the entire possession, management, and control over the leasehold premises, and all other the property in the deed mentioned, and also the custody thereof, from its execution until the time of his death. The clear residue was of the value of 8000*l.*"

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transferred into the names of the said [*trustees*] the sum of 750*l.* Bank Stock, lately standing in her name, as they do

The case was argued several times before the learned Barons, who delivered their opinions *seriatim*. *Richards*, Baron, after some preliminary observations, proceeded as follows:—

“ Now this indenture is made without what we may truly call any fair consideration, for it is obviously merely nominal; and the Court is bound to notice the distinction between a real and a nominal consideration. It is a voluntary deed; for, the consideration not being valuable, does not make it otherwise. On that subject it is impossible to form any doubt, and therefore it must be taken to be perfectly voluntary. The maker of the deed keeps it in his own possession. It is stated in the verdict, it is true, that the deed was sealed and delivered; but it is clear what the meaning of that is—that it was sealed and delivered for the purpose merely of making it a deed: not delivered to the parties in whose favour, for the benefit of the infant, the deed seems to have been made; for it is stated by the jury, that the grantor had kept the deed in his own possession down to the time of his death: he never transferred the stock, and took no measures to clothe the trustees with any control or authority over it, or to invest them with any part of the property. He received the dividends; he might have sold the stock whenever he should have thought fit. The deed was in his custody: the trustees do not even seem to have known any thing of it, and it appears to have been purely a deed made in effect only between him and himself. He therefore continued, in point of law, as the jury find in point of fact, in complete possession, management, and control of all the property which is mentioned in this instrument; and nothing was to take it from him but his death, if he chose to die without disposing of it in the way in which he had still a right to dispose of it. It was therefore, in all respects, testamentary, so far as the complete possession of it during his life-time, and that possession being to be transferred after his death, goes. It seems to me to be as completely testamentary as if he had made a will to be ambulatory till his death, and then to vest his property in the way intended by this instrument. The instrument is right in point of form, and trustees are interposed; but there is no doubt that the Court is bound to look, not merely to the form of the thing, but the substance. Then is not this an instrument, in point of substance, which reserves to this party the total command and control of the property down to the time of his death; and does it not begin then, and then only, to operate, just as a will would operate? It seems, therefore, to carry with it every mark of being testamentary; and is so in effect, as much as any testament, in my opinion, would have been.

Instrument in the form of a deed of settlement held to be testamentary.



hereby acknowledge. AND WHEREAS, in further pursuance of the said intention of the said [settlor], by an indenture of

Contemporaneous transfer of mortgage.

“ There is a case decided by Sir John Nicholl, which may be found in Dr. Phillimore's Reports, just published, which it may be useful to refer to on this question. It is the case of *Thorold v. Thorold*, (Vol. 1, p. 1\*), where an instrument, in the form of a deed of gift, was admitted to probate. I do not cite it as an authority entirely in point, but as fixing the principle throughout on which this case should be decided. I will not, therefore, trouble the Court with more of that case, but shall only refer to it. There are, besides, many cases where deeds are considered testamentary, and have been acted on accordingly, and probate granted of them when application was made to the Ecclesiastical Court. There is this distinction in the case which I have just cited, that there were no trustees named; but the learned Judge, in his decision, stated, and indeed common sense so dictates, that, when you look into transactions of this sort, you must look to the substance, and not the mere form. Now, if it is once admitted, that, if there were no trustees here, the act would be testamentary, as those cases decide, surely you will not suffer a person to escape the law, and that by his own act, by the formality of introducing trustees who are of no use during his life, while he keeps all the property and retains the control of it, and the trustees know nothing of it; at least nothing of the sort is found by the verdict.

Case of *Attorney-General v. Jones*.

“ After this he makes his will, and he incorporates with it this deed, as it seems to me. He refers to the deed in it: he there states, that he has a power to revoke the deed; he confirms it, however, except so far as he revokes it: he alters it, by giving some legacies, and he confirms the rest. If he then gave the legacy anew to this lady, it would have passed under the will. It is ultimately under the terms of the will that he confers a testamentary benefit on her; and, therefore, it seems to me, that these two instruments may be fairly considered together. But I think the true question arises upon the deed itself. Now I admit, if a will had not been made, the tenor of the deed must have been attended to, and the property must have gone accordingly; but, as it is, it must go in the nature of a testamentary disposition made by Mr. Franklin. That being the opinion I had at first entertained, I am, after a good deal of consideration upon the subject, of the same opinion, and think that this paper is to be considered a testamentary paper; or that, in all events, the two together are testamentary.”

Wood, Baron.—“ I am sorry I cannot agree in the opinion already delivered. I think the question is, as has been properly stated, whether the indenture set out in the verdict can be deemed a will or testamentary

\* *Vide cases cit. post*, Vol. 10, p. 16 *et seq.*

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transfer of mortgage, bearing even date with these presents (*d*), made between the said [*settlor*] of the one part,

instrument, within the meaning of those acts which impose the duty on legacies? Then we must inquire what is the meaning of 'will or testamentary instrument' there, and why those latter terms are used in this clause of the act. Now it appears to me they have been used for the purpose of including in its provisions any informal instrument which might still be in effect a will; for a will, properly speaking, is not complete, unless there be executors appointed; but yet there may be instruments which do not appoint executors, which may, notwithstanding, still be considered testamentary instruments. It may also have relation to Scotland, where the term 'testamentary instrument' is used instead of will. I agree that there are many irregular instruments which have been deemed testamentary, although they have been, in point of form, something like deeds; but, I believe, there is no instance to be found, where an instrument properly made, in due technical form, and which can take effect as a deed, has been considered as testamentary. I believe the cases on this subject, which have been published in Dr. *Phillimore's* late Reports, are all upon papers which could not operate as deeds. You will find many instances where the instrument has been in the nature of a bill of sale, but there have been no parties to it, wherefore that never could operate as a deed; and, therefore, rather than it should have no effect at all, it has been considered a testamentary instrument. But is that the case here? This is the case of a deed regularly and duly executed. It has all the requisites to constitute a deed. It is an indenture, and a will is never an indenture. It is between parties; there is the grantor, or the bargainor, on the one part, and the trustees, or bargainees, on the other part. There is a pecuniary consideration, which is necessary, perhaps, to give it effect\*; for, although it is merely nominal, yet it is so far substantial that it is necessary to give effect to the deed; and it does give effect to it *as* a deed. There are the words 'grant, bargain, sell, transfer, and set over;' those are not words used in a will. Then there is a grant of leasehold property, and it is 'to hold for and during the term of the lease.' There is a grant afterwards of all the goods, chattels, and personal estate, not only which he has then, but which he

\* This is a mistake of the learned Baron. The nominal pecuniary consideration was not essential to the validity of the deed.

(*d*) *Vide* precedent of a separate transfer of mortgage, *ante*, Vol. 6, p. 145. The only variation in the present instance would be the substitution of a pecuniary for the marriage consideration. In this respect the deed would resemble a transfer made on the occasion of a change of trustees. *Vide ante*, Vol. 6, p. 380.

and the said [*trustees*] of the other part, for the pecuniary consideration therein expressed, (but no part of which consi-

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shall have at the time of his death. I agree that this deed cannot operate with respect to any thing but that which he was possessed of when he made it; for if he afterwards acquired property, it would not pass: but would that make any difference in the denomination to be put on the instrument itself? Many deeds may operate in one respect, and not in another. This is one of those; but it is a deed, and will have operation as to that which the grantor was possessed of at the time he made the deed.

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“Then some stress has been laid on this, that one of the trusts is, that it is given to the trustees for the use of the grantor during the term of his life; and that there is also a proviso of revocation, with a power of appointing new trustees. But all these things make no difference with respect to its being, or not being, a deed: if it had not had that power of revocation, it would have been absolute; but having it, it is equally a deed, only it has a power of revocation, which is an extremely common thing in instruments of this sort.

“It is then said, that it must be a will, because, in a subsequent will which the testator makes, he takes notice of it, and confirms it. But can such a confirmation make any difference? Can that alter the nature of it? It gives no additional force to it whatever. And how the confirmation by will of a deed can convert the deed itself into a will, I cannot conceive.

“Now let me suppose that there was no power of revocation; would it not have been a good and valid deed? Would any man contend that that could be a will or testamentary instrument, which is, in point of form and substance, a deed, and which must operate as a deed? It could not be proved in the Ecclesiastical Courts, because it would not be a subject within their jurisdiction. Then let me suppose, that after this deed (there being no power of revocation in it, or to make alterations of the uses of the deed,) the party had made a will, disposing of the property differently; that will would not avail against the deed: but the deed, notwithstanding the alteration by will, if he had not reserved the power, would prevail against the will. That shews, pretty clearly, that it is a deed and not a will. If, on the other hand, he had made a will, and then had made another will, the second would have been a revocation of the first will; but here, if he had made a second deed, contrary to the first deed, the first deed would prevail against the second, if he had reserved no power to alter the trusts of the deed by a subsequent instrument.

“In this case, there is no doubt that the legal estate passed from him in his lifetime. Now, is there any case where a legal estate passed by a

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deration was actually paid by the said [*trustees*] to the said [*settlor*] ), the said [*settlor*] did assign and transfer unto the

will in the lifetime of the testator? This was a deed which passed the legal interest in the personal chattels which he was then possessed of; it would not pass *choses en action* in law, but it would pass the leasehold property. There are also pictures, furniture, and plate, and the legal interest in those must have passed. If an ejectment were to be brought, to recover the possession of the leasehold premises, it must be in the name of the trustees; for the legal interest was vested in them. It happens in this case that he has appointed his trustees to be his executors; and, therefore, they have two characters; but, I take it, if they were to bring an ejectment, it must be in the character of trustees, and not as executors; because the interest is in them in that original character, and they take nothing by the will in the leasehold estate. And if the will had appointed other persons executors, still every thing that passed by the deed must have been recovered in ejectment by the trustees: it is, therefore, a complete deed, and has nothing in it testamentary.

"Then some stress has been laid upon the 7th section of this statute, which has these words in it:—'That any gift, by any will or testamentary instrument of any person dying after the passing of this act, which shall by virtue of such will or testamentary instrument have effect, or be satisfied out of the personal estate of such person so dying, or out of any personal estate which such person shall have power to dispose of as he or she shall think fit, shall be deemed and taken to be a legacy.' That was introduced for the purpose of meeting the kind of case which frequently occurs, where a person may have an absolute power of disposing of property, which cannot be called his personal estate. He may have a power given him to dispose of property which is not his own, by will or deed; and if he has a power to dispose of it as he pleases, it is still his property for that purpose.

"Now, it is true, that in this deed or instrument he has reserved to himself a power of altering any of the trusts contained in the deed; and, so far as he has done that by his will, he certainly falls within this clause of the act of Parliament. The deed most undoubtedly gives him a power of doing it; and so far as he has done it the legacy-duty will attach upon it. I have no doubt upon that. And it is stated by this verdict, 'That the said William Franklin did then, by his will, give several legacies in stock and money to the amount of some hundred pounds, and appointed the said Thomas Jones and Patrick Bartlett his executors.' Therefore, such legacies as he has given in stock or money, most undoubtedly, I apprehend, will be subject to the legacy duty; and they will be subject to the legacy duty under the 7th section of the act, because they are given out of a fund which he had a power to dispose of. But with respect to



said [*trustees*] *All that* the principal sum of 2500*l.*, secured by an indenture of mortgage, bearing date on or about the

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that which is only affected by the deed itself, I apprehend no such duty can attach.

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“ Now, supposing that, instead of making this new appointment or giving these legacies by will, he had done it by deed; for he may alter the deed by a deed in his lifetime, or by any will to-be by him made: suppose he had in his lifetime made this alteration—had done in his lifetime by deed what he has done by his will—could it be contended that there would be any thing testamentary in that? Yet the whole would then have reference to a deed. Then how does the will make a difference in the deed? It makes this difference merely—that it operates as a will upon that which he has so disposed of, and, therefore, the legacies which he has given by it will be liable to the duty.

“ It was argued that this was a fraud, because it was done with an intent to avoid the legacy duty; and, probably, it was done with that view; but that was no fraud that I know of. There are two ways of doing it: a man may, by deed in his lifetime, dispose of his property, reserving the use of it to himself for life, and after his death direct it to go to his children, or such persons as he may think proper; or he may do the same thing by making a will: but he is not obliged to prefer either mode to the other; he may choose which mode he pleases, the law leaves it to his option. He may say, I will not do it by will, I will do it by deed: I will do it by deed, because I shall only have the stamp to pay for; and not by will, because it will be subject to a large legacy duty which will attach upon it, and which my legatee will be bound to pay. He has a right to do so; he has a right to make his election. If you can shew any law which says, that where there are two ways of doing a thing, the person shall do it in the most beneficial way to the revenue, you will effect something; but there is no law that so fetters any man as to his property; he may dispose of it by deed confessedly to avoid the legacy duty, which, if it were done by will, it would be subject to, but that is no fraud. If it is a defect in the law it must be remedied by the legislature; but we must decide upon the law as it stands. When the tax was laid on hair-powder the people ceased to wear it. Could you say that that was a fraud, and that therefore they must pay the tax whether they will wear powder or not? It would be monstrous; it goes to such an extent that there would be no end to it. It was no fraud in this testator to take the course most beneficial to himself, though less so to the revenue; it was a matter of prudence in him, but it was no fraud. Therefore I do not think myself warranted in making a forced and strained construction, contrary to the real meaning and import of the words, to extend this act to a dispo-

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— day of —, and all interest thereafter to grow due thereon, and all securities for the same respectively; To

sition of property effected by deed, when the act speaks only of a will or testamentary instrument. As to one part of the claim, I think some portion of the property bequeathed is liable to legacy duty; but as this is an entire verdict, the judgment ought to be given for the defendant, unless there be a *venire facias* awarded, to ascertain how much of that which he had a power to dispose of is liable to the duty."

*Graham*, Baron, after citing from the text books the definition of a will, contended as follows:—"Now, what is the disposition which this gentleman makes on the 25th of March, 1813? It is immaterial to go into his intention, because I do not found my idea on his intention to avoid the duty; the question is, whether he has done it in this way. He sets about this instrument, to give it that effect which he has, by a formal will, confirmed on a subsequent occasion; and the special verdict states the will to have been signed by him short of a month afterwards. Now what does this instrument do? I most perfectly and entirely agree with my learned brother *Wood*, that, if this instrument really did effectively dispose of any part of his property *during his life*, it has the operation of a deed; but I say that any man looking at and reading this instrument must be perfectly convinced, not only that he had no intention of parting with his property during his life, but that he has guarded against any possible interruption of his own enjoyment. Then he is in the situation of a man who has made his will. When it is urged that it would be good without a power of revocation, I agree to it, because that would take away the character of a will; but, having a power of revocation, he reserves to himself a power to annihilate it by a slip of paper, to which he may sign his name, and he may do it without a witness. I say, therefore, under these circumstances, he has left himself absolute and complete owner of the estate.

"But it is argued, (and that is an argument arising on the face of the instrument), that he has put the legal estate out of himself, because there are trustees, and he has assigned it to them; and he certainly has nominally assigned 7500*l.* stock to them. He has assigned it in one sense, but has he effectively done it? So little has he done it, he had not transferred the stock; he had not acquainted the trustees that he had executed such an instrument; he had not, in an absolute way, executed it by delivering it, for he had not given it to the parties. I do not wish to borrow any thing weak in point of argument, but let me suppose that he had sealed and delivered the deed in his own closet, and kept it in his pocket, without communicating it to the parties. Now, though I do not mean to contend that that might not operate as a delivery; for, if

HAVE AND RECEIVE the said principal and interest monies and premises unto the said [*trustees*], their executors, ad-

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there were no circumstances to shew that it was delivered conditionally, it might be a delivery; yet what would be the effective purpose of it as regards the grantor? The legal estate would be in the trustees; an ejectment might be brought by the trustees; but could it be endured that the trustees should bring an ejectment against the *cestui que trust*? They are still, in fact, to hold it for his benefit, and he is to receive the dividends, and rents, and profits; how could he be turned out then? He is, therefore, substantially, the owner of the estate up to the last moment of his life.

Case of *Attorney-General v. Jones*.

“ Look, in another respect, to the intention of the party. Does he mean to part with his leasehold estate during his life? Does he mean, that if he has any intention to sell it, or to sell the 7500*l.*, as it should be thought fit, that he shall not have power to do it? On the contrary, he reserves to himself the power of doing it with a single word, as I have stated, and I cannot put it stronger. He has a power to do it, not only by will, but by a codicil; he has nothing to do but to indorse on the deed ‘I revoke this deed,’ and sign his name, and there is an end to the deed; and no impediment is put in the way of his so disposing of this property. But it is clear that he never meant effectively to dispose of the property, when, *uno flatu*, he has given to the trustees the stock and leasehold estate, and he has given them that which he could not give without a will; he has given his plate, his books, his furniture, and his pictures, and all other his personal estate whatsoever and wheresoever, which he may be possessed of at the time of his death, by a deed of gift. That cannot be in point of law; therefore it is clear he was not about any serious present disposition of his property. If he meant it to be a transaction *inter vivos*, he must have selected the articles at the time, and specify all the articles; therefore, it is plain he did not mean to convey any thing to them at that time, or to part with a single iota of the property till his death. Then how is it to be contended that he did not remain in possession of, or had the power of disposing of that property, which he purports, in form and show, to convey by this deed; and what has he done more than this—I voluntarily do as I would by my will; I declare this to be my will, that is, that the property should go so and so. That is a will; and, therefore, I do not feel much the difficulty of the departure of the legal estate. At this day, to be sure, if he had never revoked it, it might operate as a deed, because that would have changed its complexion. He would have given it a new character by not exercising the power of revocation; but when he has revoked it, he sees the necessity there is to make a more particular determination with regard to the property disposed of,

— Transfer of canal shares.

ministrators, and assigns, for their own absolute use and benefit. AND WHEREAS, in further pursuance of the said in-

Case of *Attorney-General v. Jones*.

when he has annexed a will to it. The legal estate continues in the trustees; but does it continue in them by virtue of the deed as a deed, or by virtue of this instrument as a testamentary instrument? I say, it is a testamentary instrument; and at this day, taking it to be a testamentary instrument, they are possessed of the legal estate (independently of their character of trustees) as executors. Therefore, I think it is clear that this is essentially and substantially the will of the party. And I was much influenced by that part of the argument of my learned brother *Richards*—that the confirmatory part of the testamentary paper has a strong operation to cast the character of a will over every part of the deed; because we know that a confirmation of a deed is of itself a substantive conveyance; it passes the estate out of the person confirming the prior instrument; and that may be done as well by a will as a deed, and that is a mode of conveyance of land. That being the case, when he finds it necessary to confirm this by his will, (which was necessary, as a part of his property was fluctuating), when he confirms that, I do not think it is straining the argument to say, that he confirmed the whole of this instrument, and gave it a final operation by that will. But I do not wish to rely so much upon that part of the case. The main point is, that it is in substance a will, and in form and name only a deed. Upon these grounds I think that the sum of money so given is subject to the legacy duty."

*Thompson*, Chief Baron, after some preliminary remarks, proceeded as follows:—"Now here is first an instrument which purports, by the form of it, to be a deed; it bears the name of an indenture, and is made by a person who may be called testator or grantor. For the present we will call him grantor, while we talk of this instrument. He conveys, for a nominal consideration, to two trustees, who are parties to the deed, in general terms, first, a leasehold estate, of which he is possessed; and, after that, he assigns to them his government stock, which he specifies, and all the dividends which shall be due from it at the time of his death, and in short all his property whatsoever, enumerating specifically certain things, as plate, linen, furniture, glass, and pictures, and all the moveable property, which in its nature was fluctuating during his lifetime, and must be so. He assigns to these two persons all that sort of property which would belong to him at the time of his death, to hold to them upon certain trusts; and those trusts are, that they should be possessed of it 'for the use, benefit, and advantage of William Franklin, for and during the term of his natural life;' leaving him in the possession of the corpus of the gift, or legacy, during his life, with full power of disposing of it at



tention of the said [*settlor*], she hath, by deed poll under her hand and seal, bearing even date with these presents, assign-

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his will and pleasure; for it is not till after his death that any other of the trusts are to arise. It is not in trust for him during his life, to receive the dividends merely, but the whole property is his as long as he lives, implying a power in him to dispose of it, and spend it as he shall think proper; then, on his death only, are the other trusts to arise, and then the trustees are to act only on such property as is found—‘all the property he is possessed of at the time of his death;’—and then it is to be applied to this lady in the way mentioned. And he has reserved a power, by any deed or writing, to revoke or alter all or any of the trusts limited in the indenture of all that has been so assigned. He then makes a will, and I think it not immaterial, as has been observed, that that will expressly refers to the deed. By that he confirms the deed; he incorporates, therefore, the deed into the will, or, I should rather say, he makes it a part of the testamentary act which he is then executing, and therefore they ought to be taken and construed together, as being of the same effect. The deed has no operation during his life; he remains master of the property till after his death, and then the deed can only take effect in the nature of a will, to be proved by the executors.

*Case of Attorney-General v. Jones.*

“It would be very strange to suppose, that that should be thought a gift, which leaves it in the power of the donor whether there shall be 5000*l.* or 5*l.* at his death; he may dispose of it, or squander it, or do what he pleases. It seems to me, then, that there is no way of dealing with this instrument but by giving it the effect of a testamentary paper; and I should have no difficulty in supposing the Ecclesiastical Court would grant probate of it, and I think they would, in granting probate of it, designate the trustees as executors. In fact, the testator has made these very persons his executors, and they have obtained probate of the will; which will does refer in terms, and does confirm, excepting in the gift of a few legacies, the general provisions of that former instrument, which I call testamentary, in favour of this lady. The consequence of this is, as two of my learned brothers concur with me in thinking, that this is to be taken to be a testamentary act, and that the property in question is therefore subject to the legacy duty, and that there ought to be judgment for the Crown to the amount of this 800*l.*—Judgment for the Crown.”

This case has been much canvassed in the profession, and has been generally disapproved of. It is certainly difficult, upon sound principles of law, to defend some of the reasoning of the learned Barons. The reliance placed on the power of revocation was singular; for the insertion of such a power; so far from indicating an intention to make a will, imparts quite a contrary colour to the transaction, as a will wants not an

Remarks upon  
the case of *At-  
torney-General  
v. Jones.*

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*Testatum.*

Declaration of  
trust of bank  
stock.

ed and transferred unto the said [*trustees*] four shares belonging to her in the ——— Canal Navigation for the sum of 100*l.* each, and respectively numbered ———, in the form and mode prescribed by an act of Parliament passed in the ——— year of the reign of his late Majesty King George the Third, intituled “An Act” (*title of act*); and which assignment has been or is intended to be registered at the office of the proprietors of the said ——— Canal Navigation, as required by the said act. NOW THIS INDENTURE WITNESSETH, that, in consideration of the affection which the said [*settlor*] bears to her children hereinafter named, and for making a provision for

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express power to render it revocable. The fact of the assignment being extended to all the property of which the grantor should happen to be possessed at his decease, shews only that he attempted to include what he could not, and not that he meant to resort to a different species of disposition. Nor do the arguments, founded on the retention of the custody of the deed and the possession of the property, appear to be more convincing; for, though these circumstances are often very important when the claims of *creditors* and *purchasers* are under consideration, yet it has never been laid down that a man must disclose the deed and relinquish the possession of the property, in order to render a settlement binding on his own representatives. Still more difficult is it to accede to the observation, that the reference to the settlement in the subsequent will “threw a testamentary character over the whole.” Do not testators frequently refer to, for the purpose of confirming, some antecedent disposition of property by deed; and has it ever been surmised that such confirmation rendered the instrument referred to testamentary? If the instrument is testamentary for one purpose, it must be so for every purpose; and, therefore, if Ellen Franklin had died in her putative father’s lifetime, it must have been held, according to the principle of the case under discussion, that the property in question went not to *her* representatives, (who, if she had died intestate and unmarried, would have been the crown), but to those of the settlor, who would necessarily have been entitled, under the doctrine of lapse, if the instrument were to be construed as a will? But, whatever may be the real weight due to the grounds of determination in the case of *Attorney-General v. Jones*, it behoves the draftsman, who is preparing a general revocable deed of settlement, to avoid, as much as possible, every circumstance on which that decision professes to stand; and with this view the opinions of the Barons have been stated fully. It will be observed, that this consideration has not been lost sight of in framing the precedents in the text.

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them and the several other objects of the trusts hereinafter contained, it is hereby agreed and declared, and particularly the said [*settlor*] doth direct and declare, that the said [*trustees*], their executors or administrators, or other the trustees or trustee for the time being of these presents, shall stand possessed of the said sum of 750*l.* Bank Stock, the said mortgage debt or principal sum of 2500*l.*, and also the said four shares in the said — Canal Navigation so respectively transferred to them as aforesaid, and the dividends and interest arising therefrom respectively, upon the trusts following, that is to say, *Upon trust* from time to time to pay the dividends and interest arising from the said funds and securities respectively unto the said [*settlor*], or permit or empower her to receive the same during her life, and, after her decease, then, as to all and singular the said funds and securities, *In trust* for such person or persons, for such interest or interests, chargeable with such sum or sums of money, and for such intents and purposes, and in such manner in all respects as the said [*settlor*] shall, by any deed or deeds attested by one witness or more, direct or appoint (*e*); and in default of such

In trust for such persons, &c. as the settlor by deed shall appoint; and, in default of appointment,

(*e*) Where a settlor derives under the trusts a general power of disposition; of course it is unnecessary to reserve to him a power of revocation. This and the next precedent exhibit these respective modes of preserving to a settlor his control over the property. The present settlement has not been made revocable by will, because, according to the line of argument adopted in *Attorney-General v. Jones*, *ante*, p. 519, it would afford a ground for holding the instrument to be testamentary, and because personal property passing by a will, made under a *general* power, is liable to legacy duty. This point was recently decided by the Court of Exchequer in the matter of *Cholmondeley*, 1 Crompt. & Mees. 149, where, by marriage settlement, a sum of money was vested in trustees in trust for the husband for life, and then for the wife for life, and in a certain event (which happened) upon such trusts, and for such intents, &c., as she should by deed or will appoint. The wife executed her power by will, and it was held that the legacy duty imposed by stat. 55 Geo. 3, c. 184, attached on the fund so appointed; it being considered that the duty was imposed, not only on a legacy payable out of the personal estate, properly so called, of the testator, but on a legacy payable out of any personal estate which the testator had power to dispose of as he might think proper. The Court relied much on the terms of the previous statute, (36 Geo. 3, c. 52, s. 7), which declares that

Personalty passing by testamentary appointment liable to legacy duty, when.

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As to one moiety of Bank Stock for eldest daughter for life, and after her decease,

In trust for the children and issue of eldest daughter as she shall appoint, and, in default of appointment,

In trust for her children equally.

Testamentary appointment under general power liable to probate duty.

direction or appointment, and, subject thereto, then as to and concerning one moiety or equal half part of the said 750*l.* Bank Stock, *Upon trust* to pay the dividends arising therefrom unto [*name*], wife of [*husband*], of —, the eldest daughter of the said [*settlor*], or permit her to receive the same during her life, for her separate use, free from the control and debts of her present or any future husband, and so that during her present or any future coverture she shall have no power to alien or anticipate the same or any part thereof; And after the decease of the said [*eldest daughter*] *Upon trust* to transfer the said moiety of the said 750*l.* Bank Stock unto, between, or among such of the children or more remote issue of the said [*eldest daughter*] by her present or any future husband, who being a male or males shall attain the age of twenty-one years, or being a female or females shall attain that age or marry, (such issue being born in the lifetime of the said [*eldest daughter*]), in such shares and proportions, and subject to such restrictions and provisions, and in such manner in all respects as the said [*eldest daughter*], by any deed or deeds to be attested by one witness or more, or by her last will, or any testamentary writing, to be attested by two witnesses or more, shall direct or appoint; and, in default of such direction or appointment, *Upon trust* to transfer the said moiety of the said Bank Stock unto all and every child and children of the said [*eldest daughter*] by her (*f*) present or any future husband, who being a son or

all gifts payable out of the personal estate of the testator, or out of personal estate *which the testator has the power of disposing of*, shall be deemed and considered a legacy within the meaning of the act of Parliament. See also stat. 45 Geo. 3, c. 28, s. 3, stated *ante*, Vol. 8, p. 391; which, however, it will be observed, exempts from the legacy duty monies charged *on real estate* by will under a power created by marriage settlement or deed.

It has been also decided, that a testamentary appointment, made under a general power, is subjected to the *probate* duty, the property so appointed being regarded (as appears from its liability to the debts of the donee) as part of his personal estate. *Attorney-General v. Staff*, 2 Crompt. & Mees. 124. See also *Palmer v. Whitmore*, Id. 131, n.

It is conceived that an appointment by will, under a power of selection or distribution, would not let in either the probate or legacy duty. An appointment by deed, under such a power, is expressly exempted by stat. 55 Geo. 3, c. 184, from the *ad valorem* duty on settlements. *Vide post*.

(*f*) If the daughter has issue by a deceased husband, add—"late."



sons shall live to attain the age of twenty-one years, or being a daughter or daughters shall live to attain that age or be married, if more than one in equal shares. *Provided always*, and it is hereby declared, that no child of the said [*eldest daughter*] shall take any unappointed share in the said trust fund without bringing into hotchpot any part or share which shall have been appointed to him or her by virtue of either of the powers aforesaid, unless it shall be expressly so provided in the appointment in favour of such child. *Provided also*, and it is hereby further declared, that, in case at the decease of the survivor of them the said [*settlor*] and [*eldest daughter*], any of the children or more remote issue of the said [*eldest daughter*] who shall be actually or presumptively entitled to the said trust fund, or any part or share thereof, under the trusts aforesaid, or under any appointment or appointments to be made in favour of such child, children, or issue respectively as aforesaid, shall, being a male or males, be under the age of twenty-one years, or being a female or females be under that age and unmarried, then and in such case it shall be lawful for the trustees or trustee for the time being of these presents, (subject and without prejudice to any contrary direction or regulation contained in any such appointment or appointments as aforesaid), to apply the whole or such part as they or he shall think proper of the annual income arising from the vested or presumptive share or respective shares of such child, children, or issue respectively, in and towards his, her, or their maintenance and education, and the unapplied portion of such annual income, if any, shall be accumulated at interest in augmentation of the share or respective shares whence the same shall have arisen, and shall follow the destination thereof; with the liability nevertheless to be afterwards applied, at the discretion of the said trustees or trustee, for and towards such maintenance and education as aforesaid. *Provided also*, and it is hereby further declared, that it shall be lawful for the trustees or trustee for the time being of these presents, (subject and without prejudice as aforesaid), with the consent in writing of the said [*settlor*] and [*eldest daughter*], or of the survivor of them, and, after the decease of such survivor, then in the discretion of the said trustees or trustee, to apply any part not exceeding one half of the capital of the vested or presumptive share

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Hotchpot clause.

Provision for  
maintenance  
during minority.

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vancement.

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In case of eldest  
daughter dying  
without chil-  
dren,

Upon the trusts  
afterwards de-  
clared concern-  
ing the other  
moiety.

Trusts of the

or respective shares of any of the children or more remote issue of the said [*eldest daughter*] in the said trust fund and premises under or by virtue of the trust hereinbefore contained, or under or by virtue of any appointment or appointments to be made in his, her, or their favour as aforesaid, in or towards the apprenticing of such child, children, or issue to any trade, profession, or business, or in or towards his, her, or their establishment therein, or otherwise for his, her, or their advancement or preferment in life, in such manner as the said trustees or trustee shall think proper; And in case the said [*eldest daughter*] shall have no child, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then as to the said moiety of the said 750*l.* Bank Stock, or so much thereof as shall not have been appointed, applied, or disposed of under any of the powers or provisions hereinbefore contained, upon such and the same trusts, and for such and the same intents and purposes, and subject to such and the same powers, provisoes, and declarations for the benefit of [*second daughter*], the second daughter of the said [*settlor*], and her child or children or more remote issue, as are hereinafter declared or referred to concerning the other or remaining moiety or half part of the said sum of 750*l.* Bank Stock, or such of them as shall be then subsisting or capable of taking effect (*g*). *And as to and concerning* the other or remaining moiety

(*g*) If the daughters are to have a power of bequeathing a life interest in the settled property to any husband, add the following clause:—

Power to elder  
daughter to be-  
queath a life in-  
terest to hus-  
band.

*“ Provided always, and it is hereby declared, that, notwithstanding the trusts hereinbefore contained, it shall be lawful for the said [*elder daughter*], by will, to bequeath to any husband during his life, or for any less interest, the whole or any part of the said moiety of the said Bank Stock; but so nevertheless that this present power shall not prejudice the life interest and power of appointment hereinbefore reserved to the said [*settlor*].”* Add, if so intended, “ Nor shall the same be exercised so as to exclude or postpone the enjoyment of any child or more remote issue of the said [*elder daughter*] in any greater or larger share than one half of the said moiety of the said Bank Stock.”

or half part of the said sum of 750*l.* Bank Stock so as aforesaid transferred to the said [*trustees*] after the decease of the said [*settlor*] as aforesaid, upon trust for the said [*second daughter*], and her child or children or more remote issue, for such and the like interests, and subject to such and the like powers, provisoes and declarations, in all respects, as are hereinbefore created or declared concerning the other or first-mentioned moiety of the said 750*l.* Bank Stock so as aforesaid settled on the said [*eldest daughter*], and her child or children or more remote issue; And in case the said [*second daughter*] shall have no child, who being a son shall live to attain the age of twenty-one years, or being a daughter shall live to attain that age or marry, then as to and concerning her said moiety or half part of the said sum of 750*l.* Bank Stock, or so much thereof as shall not have been appointed, applied, or disposed of under any of the powers or provisions hereinbefore contained, upon such and the same trusts, and for such and the same intents and purposes, and subject to such and the same powers, provisoes, and declarations in all respects, for the benefit of the said [*eldest daughter*], and her child or children or more remote issue, as are hereinbefore declared concerning the other or first-mentioned moiety or half part of the said sum of 750*l.* Bank Stock, or such of them as shall be then subsisting or capable of taking effect; And in case the said [*eldest daughter*] and [*second daughter*] shall both die without having had any child who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then as to and concerning the said sum of 750*l.* Bank Stock, and the dividends and annual produce arising therefrom after the decease of the survivor of them the said [*eldest daughter*] and [*second daughter*], or so much thereof as shall not have been appointed, applied, or disposed of under any of the powers or provisions hereinbefore contained, upon such and the same trusts, and for such and the same intents and purposes, and subject to such and the same powers, provisoes, and declarations, for the benefit of the other daughters of the said [*settlor*], and their respective children or more remote issue, as are hereinafter declared or referred to concerning the other or remaining trust funds and securities hereby settled, or such of them as shall be then subsisting or capable of tak-

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other moiety of Bank Stock for the benefit of the settlor's second daughter and her issue.

In default of such issue, upon the same trusts as the first-mentioned moiety.

On failure of such trusts, Bank Stock to follow the destination of property, the trusts whereof are subsequently declared.

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PERSONALTY.

Trusts concern-  
ing mortgage  
debt and canal  
shares.

As to one-third  
in trust for third  
daughter and  
her issue.

As to one other  
third in trust  
for fourth  
daughter and  
her issue.

As to remaining  
third in trust  
for fifth daugh-  
ter and her is-  
sue.

Clause of ac-  
cruer.

ing effect. *And as to and concerning* the said mortgage debt or principal sum of 2500*l.*, and the said four shares in the said Canal Navigation, after the decease of the said [*settlor*], *Upon trust* to stand possessed of one equal third part or share thereof respectively, for the benefit of [*third daughter*], the third daughter of the said [*settlor*], and her child or children or more remote issue, for such and the like interests, and subject to such and the like powers, provisoes, and declarations in all respects, as are hereinbefore created or declared concerning the several moieties of the said Bank Stock so as aforesaid settled for the benefit of the said [*eldest daughter*] and [*second daughter*] respectively, and their respective children or more remote issue. *And as to and concerning* one other equal third part or share of the said mortgage debt and four shares in the said — Canal Navigation respectively hereby settled, *Upon trust* for the benefit of [*fourth daughter*], the fourth daughter of the said [*settlor*], and her child or children or more remote issue, for such and the like interests, and subject to such and the like powers, provisoes, and declarations in all respects, as are hereinbefore created or declared concerning the first-mentioned third part or share of the said mortgage debt and shares in the said Canal Navigation so as aforesaid settled for the benefit of the said [*third daughter*], and her child or children or more remote issue. *And as to and concerning* the other or remaining third part or share of the said mortgage debt and shares in the said — Canal Navigation, *Upon trust* for [*fifth daughter*], the fifth and youngest daughter of the said [*settlor*], and her child or children or more remote issue, for such and the like interests, and subject to such and the like powers, provisoes, and declarations in all respects, as are hereinbefore created or declared concerning the two first mentioned third parts or shares of the said mortgage debt and shares in the said Canal Navigation so as aforesaid settled for the benefit of the said [*third daughter*] and [*fourth daughter*], and their respective children or more remote issue; *And* in case any or either of them the said [*second daughter*], [*third daughter*], and [*fourth daughter*] shall die without having any child, who being a son shall live to attain the age of twenty-one years, or being a daughter shall live to attain that age or marry, then as to and concerning the part or share, or respective parts or shares, as well original as accruing, of her or them



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respectively so dying, in the said trust monies, securities, and premises hereby settled, or so much thereof as shall not have been appointed, applied, or disposed of under the powers and provisions hereinbefore contained, *In trust* for the other or others of the several objects of the trusts hereinbefore declared concerning the said mortgage debt and four shares in the said Canal Navigation, in such and the same parts and proportions, for such and the same interests, and subject to such and the same powers, provisoes, and declarations in all respects, as are hereinbefore declared concerning the original share or shares of such object or objects, so far as the same shall be then subsisting or capable of taking effect; And in case the said [*third daughter*], [*fourth daughter*], and [*fifth daughter*] shall all die without having a child, who being a son shall live to attain the age of twenty-one years, or being a daughter shall live to attain that age or marry, then, *As to and concerning* the said mortgage debt and four shares in the said Canal Navigation respectively hereby settled, or so much thereof as shall not have been appointed, applied, or disposed of under the powers and provisions hereinbefore contained, upon such and the same trusts, and for such and the same intents and purposes, and subject to such and the same powers, provisoes, and declarations, for the benefit of the said [*eldest daughter*] and [*second daughter*], and their respective children or more remote issue, as are hereinbefore declared or referred to concerning the said Bank Stock hereby settled, or such of the same trusts, intents, and purposes, powers, provisoes, and declarations as shall be then subsisting or capable of taking effect. *Provided always*, and it is hereby declared, that it shall be lawful for the trustees or trustee for the time being of these presents, with the consent in writing of the person or persons for the time being beneficially entitled to the annual income of the part or parts of the funds and securities hereby settled, in relation to which it shall be proposed or intended to exercise this present power, being of the age of twenty-one years, and if such person or persons shall be under age, or shall be otherwise incompetent to testify such consent, then in the discretion of such trustees or trustee, to sell and dispose of (*h*)

Ulterior trusts  
referring to  
those declared  
of Bank Stock.

Power to convert and vary securities.

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(*h*) If the trustees are to have a power of investing in purchases of lands, insert clause *ante*, pp. 165, 329.

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PERSONALTY.

Indemnity to  
persons paying  
trust monies.

or call in any part of the funds and securities hereby settled, or which may happen to have been purchased or obtained under this power, and invest the monies arising therefrom in the names or name of the said trustees or trustee in some or one of the public or parliamentary securities of Great Britain and Ireland, or on real securities in England or Wales. *Provided also*, and it is hereby further declared, that every person paying any monies to the trustees or trustee for the time being of these presents, shall be exempt from all responsibility in respect of the application thereof(*i*). (*Add power of appointing new trustees*). IN WITNESS, &c.

Further testa-  
tum.

Assignment of  
household fur-  
niture, &c.

*Habendum.*

Trust for settlor  
for life, and af-  
ter her decease  
upon trust to  
sell.

(*i*) AND THIS INDENTURE FURTHER WITNESSETH, that, for the considerations aforesaid, and for the purpose of providing a fund for the payment of the debts and funeral expenses of the said [*settlor*] after her decease, she the said [*settlor*] doth, by these presents, assign, transfer, and set over unto the said [*trustees*], their executors, administrators, and assigns, *All* and singular the household furniture, silver plate, china, glass, printed books, and other household effects of her the said [*settlor*], now being in and about the messuage or dwelling-house situate at —, in her occupation; and all the right, title, interest, property, benefit, claim, and demand whatsoever of her the said [*settlor*], in, to, and upon the said effects and premises; *TO HAVE, RECEIVE, AND TAKE* the said household furniture and other effects and premises hereby assigned or intended so to be unto the said [*trustees*], their executors, administrators, and assigns, upon the trusts hereinafter declared, that is to say, *Upon trust* to permit and suffer the said [*settlor*] to use and enjoy the said household furniture and effects for her own use and benefit during the term of her natural life, and after the decease of the said [*settlor*], *Upon trust* to apply and dispose of the said household furniture and effects in such manner as the said [*settlor*] shall, by any note or writing, direct, and, in default of such direction, *Upon trust* absolutely to sell and dispose of the said furniture and effects either by public auction or private contract, or partly in one mode and partly in the other, with liberty, if deemed expedient, to purchase in the same at any auction; and out of the monies

arising from such sale or sales, after defraying thereout the expenses attending the same, *Upon trust* to pay, satisfy, and discharge all and every the debt and debts which shall or may be owing by the said [settlor] at the time of her decease, and also the expenses attending the funeral and interment of the said [settlor]; and after payment and satisfaction of the said debts and expenses respectively, *Upon trust* to pay and divide the residue of the said monies unto and equally between or among such of the children of the said [settlor] as shall be living at the time of her decease. *And it is hereby declared*, that it shall be lawful for the trustees or trustee for the time being of these presents, in the exercise of their or his said trust, to pay any sum or sums of money which shall be claimed to be owing by the said [settlor] upon such evidence, whether strictly legal or not, as such trustees or trustee shall deem to be satisfactory; and also that it shall be lawful for the said trustees or trustee for the time being, in their or his discretion, to regulate and manage the funeral and interment of the said [settlor].

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Trusts concerning monies arising from the sale.

Power to trustees to satisfy claims without legal evidence, and to regulate funeral.

It has been thought advisable to distinguish this part of the precedent from the rest, because it is open to particular observation.

Where persons settle their entire property by deed, they ought to create a fund for the payment of debts, because the property of the settlor, if solvent at or rather *after* the execution of the settlement, is, by this mode of disposition, placed out of the reach of his creditors; (*vide ante*, p. 76); nor is it applicable, without express authority, to funeral expenses. A better plan, however, is not to attempt to include *all* the property in the settlement, which, indeed, can seldom be done, there being, usually, some portions of personalty that cannot be so disposed of, for instance, the money balance in the house or at the bankers, applicable to current expenditure. Furniture and household effects are, from their fluctuating nature, not eligible subjects for settlement by deed. By leaving some articles of this description to devolve to the executors or administrators, a fund remains for payment of debts and funeral expenses, for which, therefore, no provision need be made in the deed, and thus the testamentary complexion, which the insertion of such a provision always gives to a settlement, is avoided. According to this suggestion, the *testatum* clause, contained in the present note, *should be omitted*, and, in lieu thereof, the settlor might make a will, simply bequeathing, equally among his children or otherwise, all the personal estate of which he should die possessed, and appointing an executor, whose duty it would be, whether the will expressly enjoined it or not, to pay the debts and

Expediency of providing for debts, &c.

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funeral expenses. It seems advisable, (having regard to some of the arguments in *Att.-Gen. v. Jones, ante*, pp. 513, 520), that the will should not bear even date with or refer to the settlement, and that the trustees of the settlement should not be appointed executors. If it were preferred, the settlor might die intestate in regard to the small unsettled portion of his personal property. (But as to which *vide post*, Vol. 10, p. 224).

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**VOLUNTARY and REVOCABLE Settlement of LEASEHOLDS and BOND Debt on the SETTLOR and his Children; certain LEASEHOLDS are settled on the Daughters, in equal Shares, and their ISSUE, per Stirpes, (subject to ANNUITIES to his Wife and one of his Children, who is a LUNATIC), with ulterior TRUSTS in favour of the Settlor's other CHILDREN and their ISSUE, per Stirpes, subject to Powers of Selection. Other LEASEHOLDS are ASSIGNED to one of the SONS, subject to a TRUST for the SETTLOR DURING LIFE. The BOND DEBT is ASSIGNED to TRUSTEES in Trust for the Settlor FOR LIFE, and then for his SON, the Obligor, absolutely. The remaining SON is provided for by a POST-OBIT COVENANT (a). Also POWERS of SALE, LEASING, and CHANGING TRUSTEES, and of REVOKING SETTLEMENT. (A very concise Form).**

Parties.

**THIS INDENTURE**, made the — day of —, 18—,  
BETWEEN [settlor], of &c., of the one part, and [trustees],

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(a) The scheme of disposition, illustrated by the precedent in the text, is as follows:—The settlor, having a wife and six children, four sons (one of whom is a lunatic) and two daughters, and being possessed of some leasehold houses, and a bond debt owing from one of his sons, provides for his wife and children, after his own decease, in the following manner:—To the wife and lunatic son he gives annuities, to cease on alienation, which are charged on part of the leaseholds, and a discretion is given respecting the application of the lunatic's annuity. The leaseholds thus



of &c., of the other part, WITNESSETH, that, in consideration of the natural affection which the said [*settlor*] beareth to his wife and children hereinafter mentioned, and of 10*s.* now paid by him to the said [*trustees*], the receipt whereof is hereby acknowledged, he the said [*settlor*] *Doth*, by these presents, assign, transfer, and set over unto the said [*trustees*] *All those* four messuages or tenements, situate in —, in the city of —, with the gardens and appurtenances thereto respectively belonging, in the several occupations of — and —, which said premises are held by an indenture of lease, bearing date on or about the — day of —, granted for the term of 999 years, at a nominal rent; *To hold* the same unto the said [*trustees*], their executors and administrators, during the residue now unexpired of the said term of 999 years, and for all other the term and estate of him the said [*settlor*] therein, upon the trusts following, that is to say: *Upon trust* to pay the rents and profits arising from the said premises to the said [*settlor*], or permit him to receive the same during his life, and, after his decease, *Upon trust*, out of the said rents and profits, to pay to [*wife*], the wife of the said [*settlor*], the yearly sum of 100*l.* during her life, or until her marriage, (in addition to an annuity to which she is now entitled thereout by virtue of the settlement executed on the marriage of the said [*settlor*] and [*wife*], his wife); and also to [*lunatic son*], one of the children of the said [*settlor*], the yearly sum of 80*l.* during his life; such several annuities to be payable quarterly, and the annuitants respectively to be entitled to a proportional sum for the period which may happen to elapse between the last quarterly day of payment and the period of the determination thereof respectively. *Provided always*, and it is hereby declared, that, if the said annuitants, or either of them, shall attempt to alien or charge their, his, or her respective annuities or annuity, or the same shall, by any means whatsoever, become vested in or receivable by any other per-

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*Testatum.*

Settlor assigns  
leaseholds.

Upon trust to  
pay certain an-  
nuities.

Proviso for ces-  
sation of annuities  
on alienation.

onerated are settled on the daughters for life, and the ulterior interest on their issue living at the decease of the survivor of the settlor and daughter *per stirpes*, with cross trusts, and, on failure of them, to the testator's other children and their issue. Other leaseholds are given to another son absolutely. A third son is provided for by a gift of the bond debt owing by him and the remaining son by the testator's *post-obit* covenant.

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Annuity for lunatic son to be applied for his benefit.

Trusts of leaseholds subject to annuities.

As to three-fifths in trust for the elder daughter for life;

And, after her decease, for her children or issue, as the settlor and the elder daughter or the survivor shall direct.

In default of appointment, in trust for children or more remote issue of elder daughter living at death.

son or persons, such annuities or annuity shall immediately thereupon cease; And it is hereby declared, that so long as the said [*lunatic son*] shall be afflicted with insanity of mind, (under which malady he at present unhappily labours), the said annuity of 80*l.* shall be paid to the said [*wife*] during her widowhood, to be applied by her in such manner for his benefit, as the said [*wife*], in her discretion, shall think proper, without any liability on the part of the trustees to see to the application thereof; and after her decease or marriage again, the discretionary power respecting the application of the said annuity hereby given to the said [*wife*], shall devolve to and be exercised by the trustees or trustee for the time being of these presents; And as to the said leasehold premises, after the decease of the said [*settlor*], subject to the said annuities, *Upon trust* to pay the rents and profits arising from three equal fifth parts thereof to [*elder daughter*], the elder daughter of the said [*settlor*], during her life, for her separate use, independently of any husband, and so that during any coverture she shall not alienate or anticipate the same; And after her decease, *Upon trust*, as to the said three fifth parts of the said leasehold premises for such child or children or more remote issue of the said [*elder daughter*], who shall be living at the decease of the survivor of them the said [*settlor*] and [*elder daughter*], (whether the parent or ancestor of such issue shall be living or not,) in such shares and subject to such provisions and restrictions, and in such manner in all respects as the said [*settlor*] (*b*) and [*elder daughter*], by any deed or deeds, to be attested by one witness or more, or as the survivor of them by any deed or deeds, to be attested as aforesaid, or by any will or testamentary writing, to be attested by two or more witnesses, shall appoint; and in default of and subject to any such appointment, *In trust* for the child, if only one, and for both or all the children, if more than one, of the said [*elder daughter*] who shall be living at the time of the decease of the survivor of them the said [*settlor*] and the said [*elder daughter*], and shall attain the age of twenty-one years or marry, share and share alike, and the issue, if any, attaining majority or marrying, of any

(*b*) By including the settlor in this power, he is enabled to exercise a control over the shares of the *cestuis que trust*, without resorting to his power of revocation.

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child or children of the said [*elder daughter*] who shall be then deceased, such issue to take equally among them, per stirpes, the share or respective shares which his, her, or their parent or ancestor or respective parents or ancestors would have been entitled to under the trusts aforesaid, if he, she, or they were then living. (*Add hotchpot clause, ut ante, p. 525, if deemed expedient; also provision for maintenance, ut ante, p. 525*). And in case the said [*elder daughter*] shall not leave any child or more remote issue who shall be living at the decease of the survivor of them the said [*settlor*] and [*elder daughter*], and shall attain the age of twenty-one years or marry, then, subject to the aforesaid powers of appointment, *In trust* for such other of the children or more remote issue of the said [*settlor*], living at the decease of the survivor of them the said [*settlor*] and [*elder daughter*], whether the parent or ancestor of such issue shall be living or not, and in such shares, and subject to such provisions and restrictions, and in such manner in all respects as the said [*settlor*] and [*elder daughter*], by any deed or deeds to be attested by one witness or more, or as the survivor of them, by any deed or deeds to be attested as aforesaid, or by any will or testamentary writing to be attested by two or more witnesses, shall appoint; and, in default of such appointment, *Upon trust* to pay to the said [*lunatic son*] the yearly sum of 20*l.* during his life, in augmentation of the annuity of 80*l.* hereinbefore directed to be paid to him; And it is hereby declared, that the provisions hereinbefore contained concerning the application of the said original annuity of 80*l.*, and also concerning the cesser and determination thereof, shall extend and apply to the said additional annuity of 20*l.*; *And* as to the said three-fifth parts of the said leasehold premises, subject as aforesaid, *In trust* for the child, if only one, and for both or all the children, if more than one, of the said [*settlor*], who shall be living at the time of the decease of the survivor of them the said [*settlor*] and [*elder daughter*], (except the said [*lunatic son*]), and the issue then living, and who shall attain majority or marry, of any child or children of the said [*settlor*], (except as aforesaid,) who shall be then deceased, in equal shares, such issue to take equally among them per stirpes the share or respective shares which his, her, or their parent or ancestor, or respective parents or ancestors would have been

In default of such issue, in trust for the other children and issue of the settlor as he and the elder daughter or the survivor shall appoint.

In default of appointment, in trust to pay lunatic son an additional annuity; and, subject thereto,

In trust for the other children of the settlor, and their issue per stirpes.

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PERSONALTY.

Accruing share  
of younger  
daughter to be  
subject to the  
trust affecting  
original share.

In default of  
prior objects, in  
trust for elder  
daughter.

As to the re-  
maining two-  
fifth parts, in  
trust for the  
younger daugh-  
ter and her is-  
sue in like man-  
ner.

Power of sale.

entitled to under the trusts aforesaid, if he, she, or they were then living. *Provided* nevertheless, and it is hereby declared, that any share which [*younger daughter*], the younger daughter of the said [*settlor*], or any of her children or more remote issue, may or would be entitled to under the trust lastly hereinbefore contained, shall be subject to the trusts and provisions hereinafter declared concerning the remaining two-fifth parts or shares of the said leasehold premises, constituting his, her, or their original share therein, or such of the same trusts and provisions as shall be then subsisting or capable of taking effect: And if there shall be no child of the said [*settlor*], (other than the said [*lunatic son*] ), who shall be living at the decease of the survivor of them the said [*settlor*] and [*elder daughter*], and likewise no remoter issue then living who shall attain the age of twenty-one years or marry, then as to the said three-fifth parts of the said leasehold premises, subject to the aforesaid powers of appointment, *In trust* for the said [*elder daughter*], her executors or administrators; *And* as to the remaining or other two equal third parts or shares of the said leasehold premises, *In trust* for the said [*younger daughter*], and her child or children or more remote issue, for the like interests, subject to the like powers and restrictions, and in the like manner in all respects, and with the like ulterior trusts in favour of the other child or children or more remote issue of the said [*settlor*], and subject to the like powers, restrictions, and provisions in all respects as are hereinbefore declared concerning the three-fifth shares so as aforesaid limited in trust for the said [*elder daughter*], and her child or children or more remote issue, as fully and effectually to all intents and purposes as if the same were here repeated, *mutatis mutandis*. *Provided always*, and it is hereby declared, that it shall be lawful for the trustees or trustee for the time being of these presents, with the consent in writing of the said [*settlor*] during her life, and after her decease, with the consent in writing of the said [*elder daughter*] and [*younger daughter*], or the survivor of them, and after the decease of such survivor, then in the discretion of such trustees or trustee, during the minority of any of the children or more remote issue of the said [*elder daughter*] and [*younger daughter*], who shall be actually or presumptively entitled to the said leasehold premises hereinbefore assigned,



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or any share thereof or interest therein, (but without prejudice to any leases to be granted as hereinafter mentioned), absolutely to sell and dispose of the said leasehold premises, or any part thereof, either by public auction or private contract, and to assign and dispose of the same when sold unto the purchaser or purchasers thereof, or as he, she, or they shall direct; And it is hereby declared, that, in the exercise of the said power of sale, the said trustees or trustee are and is empowered, if they or he shall deem it expedient so to do, to purchase in the said leasehold premises at any auction or auctions, and to resell the same, also to sell the said premises subject to any restrictions with respect to the evidence of title to be required by the purchaser or purchasers, and likewise to rescind or vary the terms of any contract for purchase which any person or persons may have entered into with such trustees or trustee: And it is hereby declared that the said trustees or trustee shall stand possessed of the monies arising from such sale or sales *Upon trust*, in the first place, to defray the costs and expenses attending the same, and to lay out and invest the clear residue of the same monies, with such consent or in such discretion as aforesaid, in their or his own names or name, in British government securities, or on real securities in England or Wales, with power from time to time, with such consent or in such discretion as aforesaid, to vary the securities as often as the said trustees or trustee shall think proper. *And it is hereby declared*, that the annual income arising from such securities shall from time to time go and be payable to the person or persons who, under the trusts aforesaid, would have been entitled to the annual rents and profits arising from the said leasehold premises in case the same had remained unsold. *Provided also*, and it is hereby further declared, that, so long as the said leasehold premises shall remain unsold by virtue of the power aforesaid, it shall be lawful for the said trustees or trustee for the time being, with such consent or in such discretion as aforesaid, to demise and let the said leasehold premises, or any part thereof, at rack rent, either from year to year or for any term or number of years which shall be deemed expedient, and the fine or fines, if any, which the said trustees or trustee shall receive for the granting of such lease or leases, shall be applied in the same manner as is hereinbefore directed concerning the monies to

Discretion to trustees in regard to sale.

Trusts concerning the proceeds of sales.

Power of leasing until sale.

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Further *testamentum*.

Settlor assigns  
other leaseholds  
to elder son.

In trust for set-  
tlor for life, and  
after his decease,

arise from any sale or sales to be made of the said premises as aforesaid (c). AND THIS INDENTURE FURTHER WITNESSETH (d), that, for the considerations aforesaid, and also in consideration of the sum of 10s. now paid by the said [elder son] to the said [settlor], as he doth hereby acknowledge, the said [settlor] Doth by these presents assign, transfer, and set over unto the said [trustees], ALL THAT dwelling-house with the garden behind the same, situate at —, in the parish of —, in the county of —, now held by lease from —, dated the — day of —, for the term of — years, at the yearly rent of £—, with the outhouses, rights, and appurtenances to the same belonging, To hold the said leasehold premises lastly hereby assigned unto the said [elder son], his executors, administrators, and assigns, henceforth during all the residue now unexpired of the said term of — years, and for all other the term and estate of the said [settlor] therein, upon the trusts following, that is to say, Upon trust to permit the said [settlor] from time to time to receive the rents and profits of the said premises during his life, he paying and discharging thereout the said rent reserved by the hereinbefore mentioned lease, and performing the covenants therein contained; And the said [settlor] doth hereby de-

As to including  
several proper-  
ties in one deed.

(c) With this restriction there seems to be no reason why trustees should not be empowered to lease at a premium as well as to sell.

(d) The part of the precedent which is included in this *testamentum* clause would more properly form the subject of a separate deed. The plan of including in one settlement several properties, either freehold or leasehold, which are not likely to continue united, is much to be deprecated, especially where (as in this instance) the trusts of the several properties are different. Even where the trusts are similar, it is often prudent to submit to the expense of having separate settlements, in order to avoid future disputes and inconveniences respecting the custody of the deed. The scheme here recommended has been not often illustrated in the present and other titles of this work, for two reasons, one, that it requires more space than could be well spared, and the other, that the distribution of the contents of one instrument into several is so simple an operation that it seemed unnecessary to exhibit the variations which it would occasion; for instance, in the present case nothing could be more simple than the assignment of the leasehold messuage in question to the eldest son, subject to a trust for the settlor for life, and with a reservation to the settlor of a power of revocation.

clare that, from and after the decease of him the said [settlor], the said [elder son], his executors, administrators, or assigns, shall stand and be possessed of and interested in the said leasehold premises lastly hereinbefore assigned, for all the residue of the estate, term, and interest which shall be then to come and unexpired therein, to and for his or their own absolute use and benefit, free and discharged of and from all trusts and equities whatsoever. (*Add power of leasing to the elder son, with the consent of the settlor*). AND THIS INDENTURE FURTHER WITNESSETH, that, for the considerations aforesaid, and also in consideration of 10s. (b) now paid by the said [trustees] to the said [settlor], the receipt whereof is hereby acknowledged, he the said [settlor] Doth by these presents assign, transfer, and set over unto the said [trustees], ALL THAT debt or principal sum of 800*l.* due and owing to the said [settlor] from and by [second son], the second son of the said [settlor], secured by the bond of the said [second son], dated on or about the — day of —, and the interest henceforth to accrue thereon; And also the said bond and the full benefit thereof; To HAVE AND RECEIVE the said monies, bond, and premises unto the said [trustees], their executors, administrators, and assigns, upon the trusts following, that is to say, *Upon trust* to continue the said principal sum upon the present security, or, at the request in writing of the said [settlor],

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for the son beneficially.

Further testamentum.

Settlor assigns bond debt owing from younger son to trustees.

Habendum.

Upon trust to receive monies, &c.

(b) In all the *testatum* clauses of this deed, the nominal pecuniary consideration is useless, but in compliance with the ordinary practice it has been retained; and the rather, because in the case of *Att.-Gen. v. Jones*, (*ante*, 514), the insertion of such a consideration was considered by Mr. Baron Wood to be indicative of the absence of testamentary character in the instrument there contended and indeed ultimately pronounced to be a will. Such cases shew the expediency of not too hastily withdrawing from our forms those clauses to which, though unessential, the eye is accustomed. From the course of a Judge's legal education and professional habits, it is scarcely possible that he can be sufficiently conversant with the principles of the law of real property to be able always to discriminate between form and substance.

As to nominal pecuniary consideration.

The person intended to take the beneficial interest at the decease of the settlor is made the trustee during his life, in order to avoid the necessity of again assigning the premises at the determination of the trust.

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SETTLEMENT  
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PERSONALTY.

Interest to be  
paid to settlor  
for life, and, after  
his decease,

Upon trust for  
younger son, the  
obligor.

Indemnity to  
purchasers and  
others.

Further testa-  
ment.

Settlor cove-  
nants with one  
of his sons that  
his heirs, &c.  
shall pay to the  
covenantee a  
sum of money at  
his decease.

to call in and receive the same, and place out at interest the monies so received in the names or name of the trustees or trustee for the time being of these presents, upon such other security as the said [settlor] shall think proper, with liberty from time to time, at his request in writing, to vary and change the securities; *And upon further trust* from time to time to receive the interest, dividends, and annual income arising from the said bond debt, or the securities whereon the proceeds thereof shall for the time being happen to be invested, and pay the same unto the said [settlor], or permit him to receive the same during his natural life; And after his decease, *Upon trust* to deliver up the said bond, or transfer the securities whereon the proceeds arising therefrom shall or may have been invested as aforesaid, unto the said [second son], his executors or administrators, to and for his own absolute use and benefit: *Provided always*, and it is hereby declared, that every purchaser and other person who shall pay any monies to the trustees or trustee for the time being of these presents by virtue hereof, shall be exempt from all responsibility in respect of the application of the same monies. AND THIS INDENTURE FURTHER WITNESSETH, that, in consideration of the affection which the said [settlor] bears to [fourth son], the fourth son of the said [settlor], and for the purpose of making a provision for him after the decease of the said [settlor] (c), the said [settlor] doth, for himself, his heirs, executors, and administrators, covenant and agree with the said [fourth son], his executors and administrators, that the heirs, executors, or administrators of the said [settlor] shall and will, at the expiration of twelve months from the time of his decease, pay or cause to be paid unto the said [fourth son], his executors or administrators, the

As to voluntary  
covenants.

(c) Where a settlor's property is embarked in trade, a covenant affords the only means of withdrawing this portion of it from testamentary disposition or the law of succession, which obtains under an intestacy. An executor or administrator would be entitled to treat the sum paid under a covenant of this nature as a valid claim upon the estate, as against all persons other than the settlor's creditors for value, who would of course take precedence of a person claiming under a merely voluntary obligation. As to voluntary covenants in general, *vide ante*, p. 44.



sum of £——, of lawful money of Great Britain and Ireland, with interest for the same at the rate of 5*l.* per cent. per annum, to be computed from the day of the decease of the said [*settlor*], without any deduction or abatement whatsoever. *Provided always*, and it is hereby declared, that so often as any trustee for the time being of these presents shall die, or become unwilling or unable to act in the trusts hereby created, it shall be lawful for the said [*settlor*], and after his decease for the children or child for the time being of the said [*settlor*], except the said [*lunatic son*], and, if there shall be no such child, for the surviving or continuing trustee, and, if there shall be no such trustee, then for the retiring trustee, and, if there shall be no such last-mentioned trustee, then for the executors or administrators of the last-deceased trustee, to nominate a new trustee or trustees to supply the said vacancy or vacancies, and such new trustee or trustees shall be competent to exercise all the powers and authorities herein contained (*d*). *Provided also*, and it is hereby further declared, that every trustee shall be exempt from responsibility concerning the acts and defaults of his co-trustees, and also for involuntary losses, and shall be allowed his full costs and charges incurred in the execution of the trusts of these presents: *Provided also*, and it is hereby lastly declared, that it shall be lawful for the said [*settlor*] at any time or times during his natural life, by any deed or deeds, to be attested by one or more witness or witnesses, and either referring or not referring to this present power or indenture, to revoke and make void all and every or any of the trusts, powers, and provisions, covenants and clauses hereinbefore contained or declared concerning the whole or any part of the said leasehold messuages and tenements, bond debt, monies, securities, and premises hereby settled or covenanted to be paid, or concerning any of the funds or securities whereon the proceeds of any of the said trust premises shall for the time being happen to be invested; and if the said [*settlor*] shall think proper, by the same or any other indenture to be attested as aforesaid, to limit and de-

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Power of ap-  
pointing new  
trustees.

Indemnity to  
trustees.

Power of revo-  
cation and new  
appointment.

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(*d*) It will be observed, that the power of appointing new trustees is here stripped of its ordinary but superfluous appendage of a direction to assign the trust premises.

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AND REVOCABLE  
SETTLEMENT  
OF  
PERSONALTY.

clare new and other trusts, powers, and provisions concerning the same (e): Provided nevertheless, and it is hereby declared, that this present power shall not prejudice or affect any purchaser or lessee under the powers of sale and leasing hereinbefore contained. IN WITNESS, &c.

Voluntary settlements binding on the settlors and their representatives.

(e) The reservation of a power of revocation is generally an essential part of the scheme of persons who make voluntary settlements, intended to supply the place of wills; for it seldom happens that a settlor means to divest himself of all disposing power over the settled property. Indeed, the fallacious notion is too often entertained that such a disposition may be retracted without any express power, especially if the settlor retains the custody of the deed of settlement, whose destruction he vainly imagines will at any time re-instate him in all the rights of ownership. Such a notion, of course, supposes total ignorance of the distinction—familiar to every real property lawyer—between a disposition by will and a disposition by deed, the former being revocable in its nature, the latter so far only as the express terms of the instrument render it so. It cannot be too often inculcated on the student, that voluntary settlements, whatever may be their infirmity in relation to the claims of creditors and purchasers, are absolutely binding on the settlors themselves and their representatives, and persons claiming under a subsequent voluntary settlement. As against all such claimants the disposition, though voluntary, is effectual and complete. *Villiers v. Beaumont*, 1 Vern. 100; *Boughton v. Boughton*, 1 Atk. 625; *Worrall v. Jacob*, 3 Mer. 256. The expedient of a sale therefore affords the only means of defeating a voluntary settlement not made revocable; and even this expedient (fraught with danger as it is to purchasers, for reasons which have been elsewhere pointed out,) is not available in regard to personal estate, to which the statute of 27 Eliz. c. 4, does not apply. *Vide ante*, Vol. 8, p. 144. Hence, the importance in all cases of reserving a power of revocation to a settlor who does not mean finally to renounce the dominion over his property. Nor is this the only requisite precaution: families are not unfrequently thrown into litigation by the circumstance of a man having settled property upon his children or relations by deed, and then gone on, in derogation of the settlement, to deal with it as before, thereby raising a great variety of questions as to the effect of his inconsistent acts. The property ought to be actually transferred in conformity to the tenor of the deed, by which means the chief ground for treating the disposition as testamentary is taken away, and the settlor's anxiety to retain an immediate control over the settled property might be gratified by making him one of the trustees. This is especially desirable where the settled fund consists of stock in the funds, which is convertible with a convenient but often dangerous facility.

DEED OF SEPARATION *between HUSBAND and WIFE; the Husband allowing the Wife an Annuity during their JOINT LIVES, which is to be paid to her Father, the Trustee, while the Wife lives with him. TRUSTEE covenants to INDEMNIFY the HUSBAND against the Wife's DEBTS. Other USUAL COVENANTS between the HUSBAND and Wife's TRUSTEE. PROVISIO vacating the Deed on Reconciliation (a).*

ON SEPARATION  
OF HUSBAND  
AND WIFE.

**THIS** INDENTURE, made the — day of — 18—,  
BETWEEN [*husband*], of &c., and [*wife*], his wife, of the Parties.

(a) The doctrine respecting voluntary separations between husband and wife has undergone much fluctuation. At one time it was held, that a feme covert, living apart and having a separate maintenance, might contract a personal liability to the demands of creditors. (1 D. & E. 5). But the contrary was established in the case of *Marshall v. Rutton*, 8 D. & E. 545; see also 2 Bos. & Pull. 226; 11 East, 301; 3 Camp. 122; and it is now clear, that, except in a few instances, (namely, where the husband is banished for life, or has abjured the realm, Co. Litt. 133), a married woman is incapable of suing or of being sued as a feme sole; nor would a divorce *à mensâ et thoro*, by the sentence of the Ecclesiastical Court, remove the incapacity, as it does not destroy the relation of marriage, but merely suspends many of its obligations. *Lewis v. Lee*, 3 Barn. & Cress. 291.

Doctrine re-  
specting separa-  
tions between  
husband and  
wife.

The husband's liability, however, is not co-extensive with the wife's exemption, but is subject to exceptions; for if the wife, by mutual consent of herself and her husband, is living apart from him on a separate maintenance, he is not liable for necessities supplied to her. *Todd v. Stokes*, 1 Salk. 116; *Cragg v. Bowman*, 6 Mod. 147. See also Pre. Ch. 499. The provision, however, must be certain (*Thompson v. Hervey*, 4 Burr. 2177) and ample, according to the husband's rank and condition in life; and the wife's acquiescence will not be conclusive evidence of its adequacy, as between the creditor and the husband. *Hodgkinson v. Fletcher*, 4 Camp. 70. With respect to alimony awarded by the Ecclesiastical Court, either permanently or *pendente lite*, evidence of sufficiency is not requisite. *Willson v. Smyth*, 1 Barn. & Adolp. 801. It is to be observed,

Husband's liabi-  
lity to his wife's  
engagements.

Recital of differences, and agreement to separate.

one part, and [*trustee*], of &c., father of the said [*wife*], of the other part: WHEREAS some unhappy differences having

Effect of separation provision in exempting husband from wife's debts.

that a decree for alimony made *after* the contracting of the debt, though embracing retrospectively the period during which the necessities were supplied, has been held not to discharge the husband. *Keegan v. Smith*, 5 Barn. & Cress. 375. A mere covenant to pay an annuity, without evidence of actual payment, will not suffice. *Ozard v. Darnford*, 1 Selw. N. P. 261, 4th ed.; *Nurse v. Craig*, 2 Bos. & Pull. New Rep. 148. And where an assignment of all the husband's personalty derived through the marriage was produced as evidence of the provision, it was held that the husband ought to have proved that the trustee had actually been put in possession; *Gibbs*, C. J., observing, "If the husband does not take care that the trustees perform their part and pay the allowance, the wife is left destitute." *Burrett v. Booty*, 8 Taunt. 344. But surely it would, in general, be enough that the husband proved payment to the wife's trustee. Due appropriation by the latter would be presumed in the absence of evidence to the contrary. The case of *Burrett v. Booty* shews, or at least implies, that the husband may be exonerated by an absolute gift no less than by a provision to arise *de anno in annum*, though it is obvious that such a disposition does not secure the wife against the possibility of her becoming reduced by improvidence to a state of destitution. Indeed, the same hazard attends a provision by way of annuity, unless it is made *inalienable*.

Separation inoperative to dissolve or suspend the nuptial relation.

In considering the validity of instruments executed on the occasion of a separation between husband and wife, they are to be viewed, first, in relation to the mere personal contract to live apart, and, secondly, in regard to any concomitant engagement or settlement of property. In the first point of view, the infirmity of the instrument is apparent. The wife is disabled, by the incapacity incident to a state of coverture, from changing or affecting in any manner her personal rights and situation, (11 Ves. 533); and the husband, though under no such general incapacity, cannot, it should seem, denude himself of his marital rights while the matrimonial relation subsists, and to suspend the incidents of or to dissolve that relation, recourse must be had to the proper ecclesiastical tribunal, or the paramount authority of the legislature. In the meantime, it is obvious that a Court of equity could not, under the stipulations of a deed of separation, restrain the husband or wife from seeking in the Ecclesiastical Court the restitution of conjugal rights, without intrenching upon the jurisdiction of that Court\*.

\* Cases in equity are often referred to as if the Court had enforced the agreement to live separately. This remark particularly applies to *Guth v. Guth*, 3 B. C. C. 614, which is so stated in the marginal note of the re-



arisen between the said [*husband*] and [*wife*], his wife, they have mutually agreed to live separate and apart from

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See *Wilkes v. Wilkes*, 2 Dick. 791; *Fletcher v. Fletcher*, 2 Cox, 107. It cannot be denied, however, that the secular Courts have, in several instances, recognised the validity of a mere separation agreement, so far as to afford the wife a remedy in the event of the husband attempting, in contravention of his engagements, to assert his legal authority over her person. *Lord Vane's case*, 13 East, 171, n.; *Head v. Head*, 3 Atk. 548; *Listor's case*, 13 East, 173, n. See also 1 Burr. 542. One of the most signal instances of this kind is the case of *King v. Mead*, 1 Burr. 541, where the Court of King's Bench discharged a married woman who had been brought up under an *habeas corpus* obtained on the application of her husband, because it appeared that the husband, in consideration of a settlement made on him out of her separate estate, had, by articles of separation, covenanted "never to disturb her or any person with whom she should live;" the Court remarking, "that this agreement was a formal renunciation by the husband of his right to seize her or force her back to live with him," and that the attempt to seize her by violence would be a breach of the peace. See also *King v. Edgar*, Cas. temp. Lord Hard. 152, n., and 2 Rop. Husb. and Wife, 317. The case of *King v. Mead* fell under the unqualified reprehension of Lord Eldon, in *Lord St. John v. Lady St. John*, 11 Ves. 532, where his Lordship shewed how incompatible it was with every sound principle of law to permit parties, by voluntary contract, virtually to dissolve the marriage and release each other from all the duties and obligations incident to the nuptial relation, and this too by the effect of covenants by and with the wife, who was under a legal incapacity to bind herself by any species of contract whatever. His Lordship's remarks in the case of *Marquess of Westmeath v. Marchioness of Westmeath*, in the House of Lords, 1 Dow, New Series, 543, indicate his unchanged sentiments on this subject.

We have now to consider how far collateral stipulations in a deed of separation between husband and wife are obligatory. For a series of years, Courts of equity entertained suits for the enforcement of agreements in such deeds to pay or secure annuities, supported by no other consideration than what resulted from the separation itself; *Turner v.*

Collateral stipulations in separation deed, how far obligatory.

porter, and on one occasion was referred to even by Lord Eldon in similar terms, (see 11 Ves. 533), though the Master of the Rolls (Sir R. P. Arden) merely decreed payment of the arrears of the annuity covenanted by the husband to be paid to his wife by way of separate maintenance, but which, as we shall presently see, he was not authorized to do, there being no other consideration for the agreement than the mere separation.

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each other; and the said [*husband*] hath agreed to pay and allow unto the said [*wife*] one annuity or clear yearly sum of

*Boteler*, Finch, 73; *Angier v. Angier*, Pre. Ch. 496; *Freeman v. More*, 1 B. P. C. Toml. ed. 237; *Head v. Head*, 3 Atk. 547; *Cooke v. Wiggins*, 10 Ves. 191\*; and without a whisper of objection being raised to the legal propriety or effectiveness of the transaction. The first shock which instruments of this nature received was from a *dictum* of Lord Rosslyn, in the case of *Legard v. Johnson*, 3 Ves. 361, impugning the then recent case of *Guth v. Guth*, 3 B. C. C. 614, where Lord *Alvanley* had decreed specific performance of the husband's covenant to pay to his wife an annuity by way of maintenance on the occasion of their separation. This case was also disapproved of in the case of *Lord St. John v. Lady St. John*. 11 Ves. 529, by Lord *Eldon*, who, as we have seen, forcibly exposed the impotency of all attempts to effect, by mere compact, a complete separation between husband and wife.

To what extent his Lordship's views have been adopted will be best shewn by the observations of Sir *Wm. Grant*, in the case of *Worrall v. Jacob*, 3 Mer. 268:—"I apprehend it to be now settled," said his Honor, "that this Court will not carry into execution articles of separation between husband and wife. It recognises no power in them to vary the rights and duties growing out of the marriage contract, or to effect, at their pleasure, a partial dissolution of that contract. It should seem to follow, that the Court would not acknowledge the validity of any stipulation that is merely accessory to an agreement for separation. The object of the covenants between the husband and the trustee is to give efficacy to the agreement between the husband and the wife; and it does seem rather strange, that the auxiliary agreement should be enforced while the principal agreement is held to be contrary to the spirit and the policy of the law. It has, however, been held, that engagements entered into between the husband and a third party shall be held valid and binding, although they originate out of, and relate to, that unauthorized state of separation in which the husband and wife have endeavoured to place themselves."

Remark upon  
the cases.

\* These cases present many shades of difference. The husband was the party against whom the agreement was enforced in all the cases except *Freeman v. Moore*, where a provision by the wife in favour of the husband out of her separate estate was enforced against her representatives. It is observable, that, in *Angier v. Angier*, the husband was considered to be entitled to an indemnity against his wife's debts, though it was not expressly stipulated for in the separation agreement, whose performance the Court compelled.

£—— for her maintenance and support during the joint lives of herself and the said [*husband*], subject, nevertheless,

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Several cases have since occurred in which Courts of law and equity have enforced the husband's agreements in articles of separation, supported by the consideration of a covenant of indemnity on the part of the wife's trustee. Thus, in the case of *Jee v. Thurlow*, 2 Barn. & Cress. 547, where the wife's trustee sued the husband on his covenant in a separation deed to pay an annuity to his wife. The deed contained a covenant by the trustee that the wife should release her dower, and that he would indemnify the husband against her debts. The defence was, that the wife had sued the husband in the Ecclesiastical Court for restitution of conjugal rights, in which she had failed upon proof of her adultery; and a divorce had been decreed. But the Court held, that the wife's proceedings in the Ecclesiastical Court, or even her adultery, did not vacate her title to the provision\*; and, on the authority of the cases establishing the legality of separation deeds in general, decided the action to be maintainable.

Effect of trustee's covenant of indemnity in raising a consideration for the husband's obligations.

In the case of *Elworthy v. Bird*, 2 Sim. & Stu. 372, a bill was filed by the wife and her next friend, praying the specific performance of an agreement for a separation. It was contained in a memorandum signed by the husband's counsel on his behalf, on the occasion of an indictment being preferred against him for assaults committed on the wife, and which provided that a deed of separation should be prepared for securing an annuity to the wife, and indemnifying the husband against his wife's debts, &c. The bill prayed payment of the arrears of the annuity, and the execution of a proper deed. The defendant put in a general demurrer, which Sir *J. Leach*, V. C., overruled, observing, that, as these articles contained an engagement on the part of the father and brother of the wife to indemnify the husband from the debts of the wife, there could be no doubt that the Court would enforce the stipulation against the husband.

The wife, in respect of any separate estate which she possessed, would also, on her part, be bound by engagements affecting that estate in a separation deed, supported by collateral considerations. Thus, where, by a settlement in 1821, previously to marriage, the real and personal property of the wife was vested in trustees, upon trust to pay 10,000*l.* to the husband, and to stand possessed of the residue to such uses as she should appoint, and in default of appointment for her own sole and separate use. By a deed of separation, executed in 1827, between the husband of the first part, the wife of the second part, and the trustees of the

Provision for the husband out of wife's separate estate held to be binding on her.

\* *Vide Seagrave v. Seagrave*, 13 Ves. 443.

*Testatum.*

to the proviso hereinafter contained. NOW THIS INDENTURE WITNESSETH, that, for effectuating the

settlement of the third part, reciting, that the husband and wife had agreed to live separate from each other during the remainder of their joint lives, and that it had been agreed that the husband should receive an annuity of 400*l.* out of the separate estate of his wife, the wife charged her separate estate with the payment of the annuity, and directed that the trustees should stand possessed of the same estate upon trust to indemnify the husband against all debts incurred or to be incurred by the wife. The husband covenanted to permit the wife to receive and enjoy, for her separate use, all the property to which the wife or he in her right was or might at any time be entitled, and also not to molest the wife. The wife died in the lifetime of her husband, who, by his bill in the present suit, prayed payment of the arrears of the annuity. Sir *J. Leach*, M. R.—“The separation of husband and wife being against the policy of the law, the Court will not act to enforce a contract in a deed of separation, unless there be other considerations to support it. If there be a covenant by a third person to indemnify the husband against the debts of the wife, this Court will enforce the husband’s covenant for the payment of an annuity to the wife. Here the wife, being absolutely entitled to property to her sole and separate use, covenants to pay an annuity to the husband. The law acknowledges no separate estate in the wife; but it is otherwise in a Court of equity, where the wife is permitted to deal with such property as if she were a feme sole, not only as to strangers, but as to her husband. The question is, whether there is a consideration other than the act of separation to support the grant of this annuity to the husband; and I am of opinion, that the release by the husband of his marital right in the future-acquired property of the wife is a good consideration from the husband to support the claim to this annuity.” *Logan v. Birkett*, 1 Myl. & Keen, 220.

Trustee’s indemnity validates husband’s settlement against creditors.

A covenant by the wife’s trustee to indemnify the husband from her debts, being a valuable consideration, will protect the settlement against the claims of creditors and purchasers. Thus, in *Stephens v. Olive*, 2 Bro. C. C. 90, where A., being entitled to certain real estates for life, subject to a mortgage for 500*l.*, executed certain indentures of lease and release, whereby, after reciting that he and his wife, B., had agreed to live separate, he conveyed his life estate to trustees, upon trust, first, to keep down the interest of the mortgage, then to pay taxes, &c., and next, an annuity of 35*l.* to B. for her separate maintenance. The trustees covenanted to indemnify A. against the debts which B. might contract after the separation. A bond creditor of A., to whom he was indebted at the time of the execution of the settlement, instituted a suit to set it



said agreement, and in consideration of the covenants and agreements hereinafter contained on the part of the said

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aside as being voluntary. But Sir *Lloyd Kenyon*, M. R., held the settlement to be valid, observing that the covenant by the trustees to indemnify the husband against the debts which the wife might contract after the separation was a valuable consideration. See also *King v. Brewer*, 2 B. C. C. 93, n.

So, in the case of *Worrall v. Jacob*, 3 Mer. 256, where A., a trader liable to the bankrupt laws, and B., his wife, having executed a settlement after marriage, by which the lands in question, formerly the property of the wife, then stood limited, in default of issue of their bodies, to the survivor of them in fee; and a separation afterwards taking place between them, A., by a deed executed on that occasion, covenanted with a trustee to pay B. an annuity of 70*l.*, and, in case he should survive his wife, to convey his remainder in fee to such persons as B. should, by deed or will, appoint. The trustee, on his part, covenanted to indemnify A. against B.'s debts, and against any demand for alimony which she might at any time make. B. executed an appointment in favour of the plaintiffs. A. survived B., and became a bankrupt, and died. A bill was filed by the appointees of the wife against the assignees of the husband, praying a conveyance in execution of the husband's covenant. Sir *Wm. Grant*, M. R., in answer to the argument that "an indemnity against the wife's debts was an indemnity against nothing, as the husband, living apart from his wife, and allowing her a separate maintenance, is not liable to pay her debts," observed, that this was too largely stated; for questions frequently arise as to the husband's liability, notwithstanding a separate maintenance is provided for the wife. "The sufficiency of the maintenance," continued his Honor, "according to the condition and fortune of the parties, is held to be a question for the consideration of the jury. This covenant may, therefore, afford a most important protection to the husband, and throw a burthensome obligation on the trustee. In *Hyde v. Price*, 3 Ves. 437, Lord *Alvanley* calls it a very material covenant, although at that time it was held that a married woman, having a separate maintenance, might herself be sued for the debts she contracted." The Master of the Rolls, therefore, decreed the performance of the covenant.

The general result of the cases, then, would seem to be, that the Courts, on the one hand, do not regard the separation as possessing any inherent sustaining efficacy, nor do they, on the other hand, view it as so essentially immoral as to vitiate all the stipulations or provisions tending to carry into effect the object of the parties, but leaves collateral considerations to exert their full force upon the instrument, which must,

Result of the  
cases.

Husband covenants with trustee to permit his wife to live separate.

[*trustee*], he the said [*husband*], for himself, his heirs, and administrators, *Doth* covenant and agree with the said

therefore, stand or fall by the strength or weakness of those considerations. The interposition of equity would, undoubtedly, be refused to enforce an agreement, which was supported by no other consideration than the mere separation. What would be the fate of an actual conveyance resting on a similar consideration is not equally clear.

A difference between executed trusts and executory agreements is slightly hinted at by Sir *Wm. Grant*, in the case of *Seagrave v. Seagrave*, 13 Ves. 422; but Sir *J. Leach*, in his judgment in *Logan v. Birkett*, (*ante*, p. 548), does not allude to any such distinction; and the general tenor of his reasoning would seem rather to lead to the inference that the Court would not give effect even to an executed trust, which was supported by no other consideration than the separation. If such be the doctrine, it is difficult to apply any other rule to legal conveyances. And yet it seems rather a strong proposition to say, that if a woman, in consideration of her husband's agreeing to permit her to live separately from him, conveys lands absolutely to the husband, who performs his engagement, the conveyance is impeachable. The point, perhaps, is not, practically, of great importance, as such deeds are seldom executed without some collateral covenants; and it should be the draftsman's aim always to prevent, by their insertion, the occurrence of any question of this nature.

In estimating the efficacy of the husband's obligation, it is extraordinary that so little attention has been paid to the benefit he derives in being exempt by provision from the wife's debts; which, though it may not, for the reasons suggested by Sir *Wm. Grant*, in *Worrall v. Jacob*, *ante*, p. 549, afford a ground for dispensing with the trustee's indemnity covenant, would appear, on principle, to raise an ample consideration for the husband's engagement. Probably, however, it is now too late to advance such an argument with success. The attempt to uphold against creditors the husband's covenant to pay an annuity in a separation deed failed in *Fitzner v. Fitzner*, 2 Atk. 511, though Lord *Hardwicke* seems to have been glad to escape from the reasoning just alluded to in favour of the annuity, by adverting to the fact of its including another object than the wife.

Agreement for future separation illegal.

It is to be observed, that what has been advanced in affirmance of the legality of separation deeds, applies only to such as are executed in contemplation of an *immediate* separation; for it seems to be admitted on all hands, that a deed providing unconditionally for the event of a *future* separation is illegal.

The leading authority for this position is the case of *Durant v. Titley*, 7 Price, 577, where an action of covenant was brought by the wife's

[*trustee*], his executors and administrators, by these presents, in manner following, that is to say, that she the said

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trustee against the husband to recover arrears of an annuity under a separation deed, which recited existing differences, and bound the husband to pay the annuity in case she should live apart from her husband and take one of her children to live with her; it was objected, that this deed, being executed in contemplation of a future separation, was void; upon which ground (as it should seem) the Court of Exchequer Chamber, (consisting of *Abbott*, C. J., and *Dallas*, C. J.), reversing a judgment of the Court of Exchequer, held that the action could not be maintained. And, even if the separation were conditional, being to take place with the consent of third persons, the validity of the deed is questionable. See *Lord St. John v. Lady St. John*, 11 Ves. 538. The case of *Rodney v. Chambers*, 2 East, 283, (see also *Chambers v. Caulfield*, 6 East, 244,) which is a direct authority for such a distinction, has been slightly treated; though it was considered by Mr. Justice *Bayley*, in the case of *Jee v. Thurlow*, 2 Barn. & Cress. 552, not to have been affected by the recent decisions. Sir *Samuel Romilly's* argument in *Lord St. John v. Lady St. John*, 11 Ves. 538, places the principle of this doctrine in a very clear point of view. He observed, that, even admitting that the wife was to be treated as a feme sole, a provision for future separation could not be valid, for it would not be valid if contained in a settlement previous to marriage, when she was actually sole;\* and Lord *Eldon* admitted the force of this argument.

It is to be observed, also, that if the separation is suspended by a temporary reconciliation, the provisions of the deed, though not in terms contemplating a future separation, are absolutely vacated, and cannot be afterwards acted on; *Fletcher v. Fletcher*, 2 Cox, 99; *Durant v. Titley*, 7 Price, 577; but see *Gawden v. Draper*, 2 Vent. 217; and it is enough for this purpose that the parties ostensibly live together as husband and wife. *Hindley v. Marquess of Westmeath*, 6 Barn. & Cress. 200; *Marquess of Westmeath v. Marchioness of Westmeath*, 1 Dow, New Series, 519.

Effect of temporary reconciliation.

It remains to notice in what cases the husband's offer to receive and maintain his wife determines her right to a separate maintenance. Such a proposal clearly puts an end to, by removing, the occasion of the maintenance provision, which a Court of equity will decree† to a deserted and

When husband's offer to maintain the wife determines her right to a separate maintenance.

\* But see *Hoare v. Hoare*, 2 Ridg. P. C. 268.

† See *Oxenden v. Oxenden*, 2 Vern. 493, Pre. Ch. 234; *Williams v. Callow*, 2 Vern. 752; *Sleech v. Thorington*, 2 Ves. sen. 562; *Watkyns v. Watkyns*, 2 Atk. 96; *Atherton v. Nowell*, 1 Cox, 229; *Wright v. Mor-*

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[*wife*] may from time to time and at all times hereafter live separate and apart from the said [*husband*], her husband, as if she was sole and unmarried; and that she shall be free from the power, command, restraint, control, authority, and government of him the said [*husband*], and shall and may live and reside at such place or places and in such manner as to her shall from time to time seem meet; and that he the said [*husband*] shall not nor will molest or disturb the said [*wife*] in her person or in her manner of living, nor at any time or times hereafter require, or by any means, either by ecclesiastical censures, or by taking out citation or process, or by commencing or instituting any suit whatsoever, or otherwise howsoever, endeavour to compel her the said [*wife*] to cohabit or live with him the said [*husband*], or to

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destitute wife, out of her own equitable property. *Bullock v. Menzies*, 4 Ves. 798. The husband's offer, however, will be disregarded, if there is strong ground to suspect that his overtures are insincere, and dictated by any other motive than a real desire of reconciliation; *Watkins v. Watkins*, 2 Atk. 97; or if his former conduct and present situation are such as to render it evidently injurious to the wife again to live with him. *Atherton v. Nowell*, 1 Cox, 229.

Whether the husband's proposal to receive his wife determines a separate maintenance agreed upon between them on the occasion of a separation, of course, depends on the terms of their agreement. If the annuity is to be paid so long only as they shall mutually agree to live apart, then it is obvious that the husband's offer to renew their cohabitation puts an end to the state of facts on which the continuance of the annuity depends. *Head v. Head*, 3 Atk. 295. If, on the other hand, the provision is to continue until the parties mutually agree again to live together, the concurring act of the wife herself is necessary to determine the annuity; and the mere offer of the husband to receive and maintain her will not affect her claim. See *Guth v. Guth*, 3 B. C. C. 614. Explicitness on this point, therefore, should be an object of attention in preparing separation deeds.

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*ley*, 11 Ves. 12, 23. In the case of *Duncan v. Duncan*, Coop. 254, Sir Wm. Grant, M. R., refused to decree maintenance for the wife out of property devolving to the husband in her right, on the mere ground of their living apart, the fact appearing to be that she had already an adequate provision out of her own property under her marriage settlement.



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enforce any restitution of conjugal rights, nor shall or will, for that purpose or otherwise, use any force, violence, or restraint to the person of the said [*wife*], or sue or cause to be sued any person or persons whomsoever for receiving, harbouring, lodging, protecting, or entertaining her; but that she the said [*wife*] may in all things live as if she was sole and unmarried, without the restraint or correction of the said [*husband*], or of any other person or persons by or through his means, consent, or procurement; *And further*, that he the said [*husband*] shall and will yearly and every year during the joint lives of the said [*husband*] and [*wife*], well and truly pay or cause to be paid into the proper hands of the said [*wife*], to and for her own sole and separate use and benefit, or to such person or persons as she in writing, signed with her proper hand, but not by way of anticipation, shall from time to time, notwithstanding her coverture, direct or appoint, one clear annuity or yearly sum of £——, of lawful money of Great Britain and Ireland, in equal quarterly portions, on the twenty-fifth day of March, the twenty-fourth day of June, the twenty-ninth day of September, and the twenty-fifth day of December, in every year, without any deduction or abatement whatsoever, with a proportional sum for the period which shall elapse between the last quarterly day of payment and the day of the decease of such of them the said [*husband*] and [*wife*] as shall first die(*b*); such proportional sum to be payable immediately on such decease; the first quarterly portion of the said annuity to be paid on the —— day of —— now next ensuing; And also, that it shall be lawful for the said [*wife*], by any writing in the nature of a will or otherwise, to dispose of all savings of the said annuity in such manner as she shall think proper. *Provided always*, and it is hereby agreed and declared, that so long as the said [*wife*] shall reside and live with her father the said [*trustee*], the said annuity or yearly

And to pay her an annuity for her separate use without power of anticipation.

So long as wife shall live with her father, the trustee, annuity to be paid to him.

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(*b*) It seems, that where a life annuity is settled by a man on his wife by way of separate maintenance, she is, in exception to the general rule, entitled to a proportional sum for the period intervening between the last day of payment and her decease. *Howell v. Hanforth*, 2 Sir W. Blackst. 843, 1016; *Hay v. Palmer*, 2 P. W. 502. Still it seems better expressly to declare such to be the intention.

Apportionment of annuity settled for separate maintenance.

ON SEPARATION  
OF HUSBAND  
AND WIFE.

Further testa-  
tum.

Covenant by  
trustee with the  
husband that  
the wife shall  
not sue for re-  
stitution of con-  
jugal rights, &c.

And to indem-  
nify the hus-  
band against  
the wife's debts.

Husband, if call-  
ed upon to pay  
debts, to be at  
liberty to de-

sum of £—— shall be paid to the said [*trustee*], at the times and in manner aforesaid in trust for the said [*wife*], and the receipt of the said [*trustee*], signed with his own proper hand, shall be a good and sufficient discharge for so much of the said annuity or yearly sum of £—— as shall be therein acknowledged or expressed to be received; and that the said [*husband*] shall not be bound to see to the application thereof. AND THIS INDENTURE FURTHER WITNESSETH, that, in consideration of the covenants and agreements hereinbefore contained on the part of the said [*husband*], the said [*trustee*], for himself, his heirs, executors, and administrators, *Doth* covenant and agree with the said [*husband*], his executors and administrators, by these presents, in manner following, that is to say, that she the said [*wife*] shall not at any time hereafter molest or disturb the said [*husband*], or require, or by any means whatsoever, either by ecclesiastical censures, or by taking out any citation or process, or by commencing or instituting any suit whatsoever, or in any other manner, endeavour to compel him the said [*husband*] to cohabit or live with the said [*wife*], or to enforce any restitution of conjugal rights, nor shall require, or by any means whatsoever endeavour to compel the said [*husband*] to allow her any further or greater or other alimony or maintenance than the said clear annuity or yearly sum of £——; *And further*, that the said [*trustee*], his heirs, executors, or administrators, shall and will from time to time, and at all times hereafter, well and sufficiently save, defend, and keep harmless and indemnified, the said [*husband*], his heirs, executors, and administrators, and his and their real and personal estates, of, from, and against all and every debt and debts which the said [*wife*] already hath contracted, or shall or may at any time or times hereafter contract, with any person or persons whomsoever, and of and from all actions, suits, claims, and demands whatsoever on account thereof, and of, from, and against all such costs, charges, losses, damages, and expenses as shall or may be recovered against, or sustained, expended, or become payable by him, or them, or any of them, on account or in respect thereof. *Provided always*, and it is hereby agreed and declared, that in case he the said [*husband*] shall at any time or times hereafter be called upon

to pay and shall actually pay any debt or debts which she the said [*wife*] hath contracted, or shall at any time hereafter contract with any person or persons whomsoever, then and in every such case it shall be lawful for the said [*husband*] to deduct, retain, and reimburse to himself, out of the said annuity or yearly sum of £——, so hereby made payable to her the said [*wife*], or to the said [*trustee*] as aforesaid, the amount of the said debt or debts which the said [*husband*] shall so pay, together with all costs, charges, and damages which he shall or may pay or sustain on account thereof, anything hereinbefore contained to the contrary notwithstanding; nevertheless, it is hereby declared, that this present proviso shall not render the said [*husband*] liable to the payment of any of the debts of the said [*wife*], or prejudice his remedy and right of action under the covenant of indemnity of the said [*trustee*] hereinbefore contained. *Provided also*, and it is hereby lastly agreed and declared, that, in case the said [*husband*] and [*wife*] shall at any time hereafter, with their mutual consent, come together and cohabit as man and wife, then, and in such case, and thenceforth the said annuity or yearly sum of £—— hereinbefore covenanted and agreed to be paid, shall cease and be no longer payable, and thenceforth all the covenants and agreements hereinbefore contained on the part of the said [*trustee*] shall become absolutely null and void to all intents and purposes whatsoever, anything hereinbefore contained to the contrary notwithstanding. IN WITNESS, &c.

ON SEPARATION  
OF HUSBAND  
AND WIFE.

duct the amount  
out of the an-  
nuity.

Deed to be void  
if the husband  
and wife should  
live together  
again.

ON SEPARATION  
OF HUSBAND  
AND WIFE.

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DEED OF SEPARATION *between* HUSBAND and WIFE. *The HUSBAND gives up to the WIFE certain EFFECTS which belonged to her before the Marriage, and RELINQUISHES all RIGHT to her FUTURE PROPERTY, authorizing her to bring Actions, &c. in his Name. He also resigns to the WIFE the CUSTODY of their CHILD. APPOINTMENT by WIFE to the HUSBAND of a LIFE INTEREST, determinable on his BREACH of COVENANT, in a Moiety of a TRUST FUND, over which she has a general disposing Power. Usual COVENANT of INDEMNITY by the Wife's TRUSTEE.*

Parties.

Recital of marriage settlement.

— Of differences subsisting.

**THIS** INDENTURE, made the — day of —, 18—, BETWEEN [*husband*], of &c., of the first part; [*wife*], of &c., wife of the said [*husband*], of the second part; and [*trustee*], of &c., (the brother of the said [*wife*]), of the third part. (*Recite marriage settlement, whereby 3000*l.*, Three Pounds per Centum Reduced Annuities, standing in the names of trustees, were settled in trust for such persons as the wife, by deed or will, shall appoint*). AND WHEREAS great and unhappy differences and disputes have arisen and do still subsist between the said [*husband*] and [*wife*], by reason whereof they have mutually agreed to live separate and apart from each other, and the said [*husband*] is willing and hath agreed to relinquish and give up to the said [*wife*] divers articles of household furniture and effects which belonged to her before her marriage with the said [*husband*], and are now in her possession, for her sole and separate use and benefit, and to be disposed of as she shall think proper, and also all her future estate and effects real and personal as hereinafter expressed; in consideration whereof, and also of the covenants hereinafter contained on the part of the said [*husband*], the said [*wife*] hath agreed to make such provision for him out of her separate estate as is hereinafter expressed; and the said



[*trustee*] at her request hath agreed to enter into the covenants hereinafter contained. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, he the said [*husband*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*trustee*], his executors, administrators, and assigns, in manner following, that is to say: that it shall be lawful for the said [*wife*], from time to time and at all times henceforth during her natural life, to live separate and apart from him the said [*husband*], and to reside and be in such place and places, family and families, and with such relations, friends, and other persons, and to follow and carry on such trade and business, as she the said [*wife*] from time to time, at her will and pleasure, notwithstanding her present coverture, and as if she were feme sole and unmarried, shall think fit; and that the said [*husband*] shall not or will at any time or times hereafter sue her the said [*wife*] in the Ecclesiastical or any other Court for living separate and apart from him, or for the purpose of compelling her to cohabit with him, or in any manner molest, disturb, or trouble her on account thereof, or any other person or persons whomsoever for receiving, harbouring, or entertaining her, nor shall or will, without the consent of the said [*wife*], visit her, or knowingly come into any house or place where she shall or may dwell, reside, or be, or send or cause to be sent any letter or message to her, or at any time hereafter attempt or endeavour to remove [*name*], an infant of the age of ——— years, the child of the said [*husband*] and [*wife*], from the custody, care, and control of the said [*wife*], or in any manner to interfere with the education of the said [*child*], but shall and will permit the said [*child*], at all times hereafter, to live and reside with the said [*wife*], or such other person or persons as she shall appoint, the said [*wife*] taking upon herself the charges and expenses of maintaining and educating the said [*child*]; And also, that the household furniture, plate, linen, china, glass, linen, trinkets, and wearing apparel, which, previously to the execution of these presents, have been delivered up to and placed in the possession of the said [*wife*], and also all other estate and effects whatsoever, real or personal, to which the said [*wife*] shall, by purchase, gift, de-

ON SEPARATION  
OF HUSBAND  
AND WIFE.

*Testatum.*

Covenant by the  
husband that  
the wife may  
live separate;

and to relin-  
quish to her the  
care of their  
child;

And that wife  
may dispose of  
the effects now  
given up to her,  
and property  
hereafter ac-  
quired.

ON SEPARATION  
OF HUSBAND  
AND WIFE.

Authority to  
wife to use hus-  
band's name;

And for further  
assurance.

vise, or bequest in her favour, or by representation (a), or by any business which she may carry on, or by savings out of her separate income or estate, or by any other means, or in any other manner during her present coverture, become entitled, shall be and remain to and for the sole and separate use of the said [*wife*]; and that she shall be at liberty from time to time, notwithstanding her coverture, by any deed or writing, or other means, in her lifetime, or by her last will and testament, or codicil, to give, grant, sell, devise, or dispose of the same respectively, in such manner and as effectually in all respects as if the said [*wife*] was sole and unmarried, and without any denial, interruption, claim, or demand whatsoever of or by the said [*husband*], his heirs, executors, or administrators, or of or by any other person or persons rightfully claiming by, from, through, under, or in trust for him, them, or any of them; *And also*, that it shall be lawful for the said [*wife*] to use the name of the said [*husband*], either alone or jointly with the name of the said [*wife*], in any actions or suits which it may become necessary or convenient for her to institute or prosecute against any person or persons whomsoever for the recovery of any money, debts, goods, chattels, estate, or effects, which shall hereafter be due, or shall belong or be owing to the said [*husband*] in right of the said [*wife*]; *And further*, that the said [*husband*], his heirs, executors, and administrators, and every person and persons whosoever, rightfully claiming any estate, right, title, trust, charge, or interest at law or in equity, in, to, or upon any estate or effects whatsoever, either real or personal, of the said [*wife*], to which the covenant hereinbefore contained shall extend, or any part thereof respectively, from, through, under, or in trust for him or them, will, from time to time, and at all times hereafter, upon every reasonable request, and at the costs and charges of the said [*wife*], her heirs, executors, administrators, or assigns, make, do, execute, and perfect, or join and concur with the said [*wife*] in making, doing, executing, and perfecting every such lawful and reasonable act, deed, assignment, conveyance, or other assur-

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(a) See *Inwell v. Newman*, 4 Barn. & Ald. 419.

ance whatsoever, for more effectually settling the said estate and effects of the said [*wife*] to her sole and separate use, or for conveying, assigning, and assuring the same unto the said [*wife*], her heirs, executors, or administrators, or unto such other person or persons, and upon such trusts and for such intents and purposes as the said [*wife*], her heirs, executors, or administrators, shall direct and appoint, and in such manner as by the said [*wife*], her heirs, executors, administrators, or assigns, or her or their counsel in the law, shall be reasonably advised and required. AND THIS INDENTURE FURTHER WITNESSETH, that, in consideration of the covenants hereinbefore contained by and on the part of the said [*husband*], and in pursuance and by virtue of the power and authority so as aforesaid reserved to the said [*wife*] by the hereinbefore recited indenture of settlement, and of all other powers and authorities enabling her in this behalf, she the said [*wife*] *Doth*, by these presents, absolutely and irrevocably direct and appoint, that, from and immediately after the execution of these presents, all and singular the dividends, interest, and annual produce arising from one moiety or equal half part of the said sum of 3000*l*. Three Pounds per Centum Reduced Annuities, and of any other stocks, funds, or securities on which the proceeds thereof shall for the time being happen to be invested, shall remain, belong, and be payable to the said [*husband*] for and during the term of his natural life, subject nevertheless to the proviso hereinafter contained: *Provided always*, and it is hereby agreed and declared, and particularly the said [*wife*] doth direct and appoint, that, in case the said [*husband*] shall at any time or times hereafter make or commit any breach or default in the performance or observance of any or either of the covenants and agreements on his part and behalf hereinbefore contained, then, and in such case, and immediately thereupon, the direction and appointment hereinbefore contained shall be absolutely null and void to all intents and purposes whatsoever, and the said dividends, interest, and annual produce shall thenceforth go and be payable to the person or persons who would have been entitled thereto if these presents had not been made, any thing hereinbefore contained to the contrary notwithstanding. AND the said [*trustee*] (at the particular instance and request and on the part and behalf of the said

ON SEPARATION  
OF HUSBAND  
AND WIFE.

Further *testa-*  
*tum*.

Wife appoints  
moiety of settled  
fund to the hus-  
band for life.

Husband's life  
interest to cease  
on breach of  
covenant.

Covenant by the  
trustee that the

SEPARATION  
OF HUSBAND  
AND WIFE.

wife shall not  
molest the hus-  
band;

and to indem-  
nify him against  
her debts.

[*wife*]) doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*husband*], his heirs, executors, and administrators, that she the said [*wife*] shall not or will at any time or times hereafter commence or institute any suit against the said [*husband*] to compel the restitution of conjugal rights, or enforce the payment or allowance of alimony, and shall not or will in any other manner molest, trouble, or disturb the said [*husband*], or without his consent visit him, or knowingly go or come into any house or place where he shall or may dwell, reside, or be, or send or cause to be sent any letter or message to him, or knowingly or wilfully hurt or damage his person, estate, or effects; *And further*, that he the said [*trustee*], his heirs, executors, or administrators, shall and will at all times hereafter effectually keep harmless and indemnified the said [*husband*], his heirs, executors, and administrators, from and against all loss, costs, charges, damages, and expenses whatsoever, on account or by reason of any debt or debts, or other act, matter, or thing whatsoever hereafter to be contracted (*a*), done, or committed by her the said [*wife*], under the powers and authorities herein contained or otherwise, or occasioned by or with her default, privity, means, or procurement, or on account or by reason of the board, lodging, maintenance, and education of the said [*child*], the costs and expenses whereof it is intended and agreed between the said parties shall be exclusively paid and borne by the said [*wife*] out of her separate estate (*b*). IN WITNESS, &c.

(*a*) It will be observed, that the indemnity is here confined to future debts, and the covenant is in other respects less extensive than the covenant in the last precedent.

(*b*) Few precedents have been given of separation deeds between husband and wife, because the clauses peculiar to them are in a narrow compass, and the dispositions of property usual on such occasions are sufficiently exemplified in the other forms in the present title.



## STAMPS ON SETTLEMENTS.

IMPOSED BY STAT. 55 GEO. 3, c. 184.

ANY deed or instrument, whether voluntary or gratuitous, or upon any good or valuable consideration, other than a *bonâ fide* pecuniary consideration, whereby any definite and certain principal sum or sums of money, (whether charged or chargeable on lands or other hereditaments, or heritable subjects or not, or to be laid out in the purchase of lands or other hereditaments or heritable subjects or not, and if charged or chargeable on lands or other hereditaments or heritable subjects, whether to be raised at all events or not), or any definite and certain share or shares in any of the government or parliamentary stocks or funds, or in the stock and funds of the governor and company of the Bank of England, or of the East India Company, or of the South Sea Company, shall be settled, or agreed to be settled, upon or for the benefit of any person or persons, either in possession or reversion, either absolutely, or conditionally, or contingently, or for life, or other partial interest, or in any other manner whatsoever;

If such sum or sums of money, or the value of such share or shares in all or any of the said stocks or funds, or both, shall not amount to 1,000*l.* . . . . .

1 15 0

And if the same shall amount to—

|                                                             |        |
|-------------------------------------------------------------|--------|
| 1,000 <i>l.</i> and not amount to 2,000 <i>l.</i> . . . . . | 2 0 0  |
| 2,000 <i>l.</i> ————— 3,000 <i>l.</i> . . . . .             | 3 0 0  |
| 3,000 <i>l.</i> ————— 4,000 <i>l.</i> . . . . .             | 4 0 0  |
| 4,000 <i>l.</i> ————— 5,000 <i>l.</i> . . . . .             | 5 0 0  |
| 5,000 <i>l.</i> ————— 7,000 <i>l.</i> . . . . .             | 7 0 0  |
| 7,000 <i>l.</i> ————— 9,000 <i>l.</i> . . . . .             | 9 0 0  |
| 9,000 <i>l.</i> ————— 12,000 <i>l.</i> . . . . .            | 12 0 0 |
| 12,000 <i>l.</i> ————— 15,000 <i>l.</i> . . . . .           | 15 0 0 |
| 15,000 <i>l.</i> ————— 20,000 <i>l.</i> . . . . .           | 20 0 0 |
| 20,000 <i>l.</i> or upwards . . . . .                       | 25 0 0 |

£. s. d. STAMPS ON  
SETTLEMENTS.

STAMPS ON  
SETTLEMENTS.

£ s. d.

And where any such deed or instrument as last mentioned, together with any schedule, receipt, or other matter put or indorsed thereon or annexed thereto, shall contain 2,160 words or upwards, then for every entire quantity of 1,080 words contained therein, over and above the first 1,080 words, a further *progressive* duty of

1 5 0

And for any duplicate of any such deed or instrument as last mentioned, the same duty or duties.

*Exemptions from the preceding ad valorem Duties on Settlements.*

*Bonds, mortgages, and other securities operating as settlements, if chargeable with the ad valorem duties on bonds and mortgages hereinbefore granted.*

*Deeds or instruments of appointment or apportionment, in execution of powers given by any previous settlement, deed, or will, to or in favour of persons specially named or described as the objects of such powers.*

*Deeds or instruments, merely declaring the trusts of any money or stock, pursuant to any previous settlement, deed, or will, or for securing any gifts or dispositions made by any previous settlement, deed, or will.*

*Wills, testaments, and testamentary instruments, and dispositions mortis causâ of every description.*

## TRUST DEEDS.

*See titles INDEMNITY, NOMINATION OF NEW TRUSTEES, PURCHASE DEEDS, and RELEASES AND COMPOSITION DEEDS.*

## WARRANTS OF ATTORNEY.

WARRANT OF ATTORNEY *to* CONFESS JUDGMENT *in an Action of* DEBT, and DEFEAZANCE *indorsed thereon, for securing* PAYMENT *of a* BALANCE *of* ACCOUNT, *with* INTEREST, *at a future Day* (a).

TO SECURE  
BALANCE OF  
ACCOUNT.

To —, [*here insert the names and descriptions of two attorneys of the Court in which the judgment is to be entered up*], attorneys of his Majesty's court of [*name of Court*], at Westminster, jointly and severally, or to any other attorney of the same Court, or to any other attorney or attorneys of any other Court at Westminster.

**THESE** are to authorize and empower you, the attorneys above named, or either of you, or any other attorney of the

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(a) A warrant of attorney affords the most summary remedy that a debtor can place in the hands of his creditor, since it entitles such creditor to enter up judgment without the intermediate steps necessary for obtaining it in an adverse suit, and enables him, by means of such judgment, to issue execution against the person or property (such as an execution will reach) of the debtor. A judgment creditor, too, takes precedence of bond and other specialty creditors in the administration of the assets of a deceased person; for which purpose, however, it must be docketed. (See *Landen v. Ferguson*, 3 Russ. 349).

As to warrants  
of attorney.

A docketed judgment is also a lien on the debtor's freehold lands, and is not liable to be defeated by an alienation, except so far as this may be effected under the doctrine (discussed *ante*, Vol. 7, p. 380) which gives to a purchaser for value, without notice, the benefit of any prior legal estate, either freehold or for a term, which he may be fortunate enough to get in; a consequence of which doctrine is, that, without a

TO SECURE  
BALANCE OF  
ACCOUNT.

said Court of —, or any other Court at Westminster, to appear for me, [*debtor*], of —, in any of the said Courts forthwith (*b*), and receive a declaration for me in an action

As to warrants  
of attorney by  
clergymen.

knowledge of the title, no dependence is to be placed on a judgment as creating an incumbrance on real estate.

Warrants of attorney are frequently taken from clergymen with a view to enable their creditors to obtain a sequestration. According to the recent authorities, the profits of a benefice may be sequestered under an execution obtained by means of a warrant of attorney, provided the purpose be not disclosed on the face of the instrument. Questions of this nature have usually arisen in regard to warrants of attorney given as collateral securities for annuities, which, by a contemporaneous deed, were vainly attempted to be charged on the benefice. It is clear that the warrant of attorney, or defeazance, may refer to the deed, without participating in the invalidity which belongs to the latter. *Gibbons v. Hooker*, 2 Barn. & Adol. 734; *Wynne v. Robinson*, 4 Bligh's New Rep. 27. And it has also been decided that the warrant of attorney is not invalidated by the fact that the defeazance refers to the bond, and the bond to the deed, and that the deed states the warrant of attorney to be given for the purpose of charging the annuity on the benefice. *Colebrooke v. Layton*, 4 Barn. & Adol. 578. In the cited case, the defeazance itself did not refer to the deed which contained the statement in question; but the reasoning of the Court countenances the conclusion, that, even under such circumstances, the validity of the warrant of attorney would not have been affected unless it had incorporated the statement in the deed.

Of course, it would be immaterial that the defeazance expressly authorized the suing out a writ of *feri facias de bonis ecclesiasticis*, as such a writ might have been sued out under the general authority of the warrant of attorney, without being mentioned. *Colebrooke v. Layton*, 4 Barn. & Adol. 578.

It is to be observed, that an annuity creditor who has entered up judgment for a penal sum is not permitted to hold possession of a benefice,

Recent rule of  
Court as to the  
entry of judgments.

(*b*) By the general rule of Hilary Term, 4 Will. 4, (5 Barn. & Adol. 2), it is ordered that "all judgments, whether interlocutory or final, shall be entered of record of the day of the month and year; whether in term or vacation, when signed, and shall not have relation to any other day;" so that the words formerly introduced into warrants of attorney, authorizing the entry of the judgment in cases of a past, present, or future term, are not now applicable. It should be shewn, however, that the judgment is to be entered up forthwith, and that the cognizee is not bound to wait until default has been made in payment of the money secured.



TO SECURE  
BALANCE OF  
ACCOUNT.

of debt against me for the sum of £——, [*double the amount of the sum to be secured*], for money borrowed, at the suit of [*creditor*], of ——, his executors or administrators, and thereupon to confess the same action, or else to suffer judgment by nil dicit or otherwise to pass against me in the same action, and to be forthwith entered up against me of record in the same Court for the said sum of £——, together with costs of suit; And these are further to authorize and empower you my said attorneys, or any of you, after the said judgment shall be entered up in my name and as my act and deed, to execute one or more effectual release or releases in the law to the said [*creditor*], his executors or administrators, of all errors, writs of error, and all benefit and advantage thereof, and all defects and imperfections whatsoever which may have been committed, or may have happened or arisen in or about or concerning the action or judgment aforesaid, or in or about or concerning any writ, warrant, process, declaration,

under a sequestration, after satisfaction of the existing arrears, in anticipation of, and as a security against, a future default. *Moore v. Ramsden*, 3 Barn. & Adol. 917, n.; *Britten v. Wait*, 3 Barn. & Adol. 915.

A warrant of attorney is often accompanied by a bond or covenant, which enables the creditor, if he thinks proper, to bring an action adversely on the bond or covenant, instead of causing judgment to be entered up by virtue of the warrant of attorney. The only difference, however, between the effect of a judgment obtained in an adverse suit, and a judgment thus entered up, is that which is made by the Bankrupt Act, the framers of which have looked with much, and, perhaps, well-founded jealousy on these instruments, as being often given by sinking traders for the purpose of creating undue preferences. On this point it will be sufficient to refer to a former note. (*Vide ante*, Vol. 5, pp. 235, 487).

Remark on accompanying bonds and covenants.

In order to render warrants of attorney valid against assignees in bankruptcy and insolvency, it is essential that they be filed in the Court of King's Bench (or a copy, if given in any other Court) within twenty-one days after execution, pursuant to stat. 3 Geo. 4, c. 39, stated *ante*, Vol. 2, p. 345, 2nd ed. It should seem that it lies upon the party who seeks to impeach the validity of the warrant of attorney to shew that it was not duly filed. *Aireton v. Davis*, 3 Moore & Scott, 138. A copy filed under this statute is sufficient evidence of the contents of the warrant of attorney as against the defendant and all claiming under him. *Sylvester v. Anthony*, 3 Moore & Scott, 191. The affidavit must state the time of actual execution. *Dillon v. Edwards*, 2 Moore & Payne, 550.

As to the filing of warrants of attorney.

TO SECURE  
BALANCE OF  
ACCOUNT.

plea, entry, or other proceeding relating thereto respectively; and for what you or any of you shall do or cause to be done in the premises, this shall be to you and every of you a sufficient warrant and authority. IN WITNESS whereof I the said [debtor] have hereunto set my hand and seal this — day of —, 18—.

Signed, sealed, and delivered, &c.

[Debtor] (L. S.)

(To be indorsed.)

WHEREAS the within-named (c) [debtor] and [creditor] have had various accounts and pecuniary transactions for many years past, and upon a full and careful examination and adjustment thereof, it appears that the sum of £—— is due and owing by the said [debtor] to the said [creditor], and it has been agreed between them that such balance of account with interest shall be secured by a judgment to be entered up in one of the Courts at Westminster against the said [debtor], at the suit of the said [creditor], his executors or administrators, with such stay of execution as is hereinafter expressed; and the within-written warrant of attorney has been executed by the said [debtor] in pursuance of such agreement. Now be it known, that no execution shall be issued upon or by virtue of the judgment to be entered up under the authority of the within-written warrant of attorney, unless default shall be made by the said [debtor], his executors or administrators, in payment to the said [creditor], his executors or administrators, on the — day of — next, of the said sum of £——, with interest thereon, at the rate of five pounds per cent. per annum, to be computed from the date hereof to the time of the payment of the said principal sum, without any deduction whatsoever; but in case default shall be made in such payment at the time aforesaid, it shall be lawful for the said [creditor], his executors or administrators, immediately thereupon, or at any time thereafter, to issue execution, or to cause execution to be issued upon or by virtue of the said judgment, for the amount of the said principal and interest monies, or so much thereof respectively as shall then remain unpaid, together

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(c) If the defeazance is written underneath, the expression throughout should be "above-named and above-written."

with sheriff's poundage and officers' fees, and all other incidental expenses (*d*) whatsoever, and that without suing out or executing any writ of scire facias, or doing any other act for reviving the said judgment, notwithstanding that no proceeding shall have been had or taken thereon for one year previously to the issuing of such execution, or the said [*debtor*] shall be then dead; And also, that the said [*debtor*], his heirs, executors, or administrators, shall not bring any writ of error, or file any bill in equity, or institute any other proceeding to impeach or invalidate the said judgment, or the execution to be sued out as aforesaid, or otherwise in relation thereto respectively. Dated this — day of —, 18—.

Witness, &c.

[*Debtor*].

[*Creditor*].

TO SECURE  
BALANCE OF  
ACCOUNT.

(*d*) It is not necessary, though usual, expressly to authorize the levying of expenses. The costs of preparing the warrant of attorney and of entering up the judgment are usually included in the sum secured. Where this is not done, the plaintiff would be entitled to taxed costs for entering up the judgment.

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DEFEAZANCE to WARRANT of ATTORNEY,  
(*indorsed thereon*), where the PRINCIPAL and  
INTEREST are payable by Instalments. (*A short  
Form*).

TO SECURE  
PRINCIPAL  
AND INTEREST  
BY  
INSTALMENTS.

**MEMORANDUM** that the within-written warrant of attorney is given to secure the repayment of the sum of £—, this day lent and advanced by the said [*creditor*], to the said [*debtor*], with interest thereon, at the rate of five per cent. per annum, computed from the date hereof, at the respective times and by the respective instalments hereinafter mentioned, that is to say, the sum of £—, being one half part of the principal sum, and the interest on the whole of such sum on the — day of —, and the sum of £—, being the remaining half part of the said principal sum, and the interest on such remaining half part on the — day of —; And in case default shall be made by the said [*debtor*], his heirs, executors, or administrators, in payment

TO SECURE  
PRINCIPAL  
AND INTEREST  
BY  
INSTALMENTS.

of the said several sums of £—— and £——, or either of them, or any part thereof respectively, at the respective periods aforesaid, then and in such case, and so often as the same shall happen, the said [*creditor*], his executors or administrators, is and are hereby authorized and empowered to issue execution, or to cause execution to be issued upon or by virtue of the said judgment, so to be entered up as aforesaid, for such of the said several sums of £—— and £—— as shall then be actually due and in arrear, or so much thereof respectively as shall remain unpaid (*a*); And it is hereby agreed and declared, that it shall not be necessary for the said [*creditor*], his executors or administrators, to sue out any writ of scire facias, or do any other act to revive the said judgment, although no prior proceedings shall have been had or taken thereon, or no such proceedings shall have been had or taken for the space of one year previously to the issuing of such execution, or the said [*debtor*] shall be then dead (*b*). Dated this —— day of ——, 18—.

As to charging  
defendant in ex-  
ecution for se-  
cond instalment.

(*a*) Where a warrant of attorney was given to secure a certain sum to be paid by instalments, and the defendant had been taken in execution for one instalment, it was held that he might be brought up by *habeas corpus* and charged in execution with the second instalment, without a rule to shew cause why he should not be so charged. *Davis v. Gompertz*, 2 Nev. & Mann. 607.

(*b*) Under this agreement the creditor may take out execution against his debtor after his death, provided it be tested antecedently to that event. For instance, suppose the debtor to die at Christmas, the creditor might issue execution before Hilary Term, because it would be tested of the preceding Michaelmas Term.

TO SECURE  
DEBT BY  
INSTALMENTS.

DEFEAZANCE to WARRANT of ATTORNEY to  
secure a DEBT by INSTALMENTS, the whole being  
made PAYABLE on Non-payment of any In-  
stalment.

MEMORANDUM that the within-written warrant of attorney is given to secure the payment of the sum of £——, the amount of a debt due and owing by the said [*debtor*] to



the said [*creditor*] for goods sold and delivered, and monies advanced and lent, by the several instalments, and in the manner following, that is to say, the sum of £——, being one-sixth part thereof, on the first day of —— next, and the like sum of £—— on the first day of every succeeding calendar month, until the whole of the said sum of £—— shall be liquidated; And it is hereby agreed and declared that in case default shall be made by the said [*debtor*], his executors or administrators, in paying any or either of the said monthly instalments, or any part thereof respectively, within fourteen days after any or either of the days hereinbefore appointed for payment thereof respectively, it shall be lawful for the said [*creditor*], his executors or administrators, to issue execution, or to cause execution to be issued, upon or by virtue of the judgment to be entered up under the authority of the above-written warrant of attorney, for the whole of the said sum of £——, (including the instalments or instalment, if any, not then due), or so much thereof as shall then remain unpaid and unsatisfied (*a*). (*Add agreement as to dispensing with writ of scire facias, &c., ut ante, p. 567*).

TO SECURE  
DEBT BY  
INSTALMENTS.

(*a*) Where a debt is made payable by instalments, it should be distinctly shewn whether a failure in regard to one instalment is to hasten the payment of the rest of the debt, or the creditor's immediate demand is to be confined to the amount actually in arrear. In the former case it should be seen, that the future instalments, which are thus accelerated, are not in part composed of interest computed up to the period of payment originally fixed, as the effect of accelerating the payment in such case would be to give the creditor more than legal interest, and thereby render the instrument usurious. There should be a rebate of interest proportioned to the change in the period of paying the principal.

Suggestion  
where debt is  
payable by in-  
stalments.

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DEFEAZANCE to WARRANT of ATTORNEY,  
*where the Payment of a PRINCIPAL Sum is postponed to a future Day, and INTEREST is made payable in the meantime* HALF-YEARLY.

TO SECURE  
PRINCIPAL AT  
A FUTURE DAY  
AND INTEREST  
HALF-YEARLY.

**M**EMORANDUM, that the within-written warrant of attorney is given to secure the repayment by the said [*debtor*],

TO SECURE  
PRINCIPAL AT  
A FUTURE DAY  
AND INTEREST  
HALF-YEARLY.

his executors or administrators, to the said [*creditor*], his executors or administrators, of the sum of £——, this day lent and advanced by the said [*creditor*] to the said [*debtor*], and interest for the same at the rate of 5*l.* per cent. per annum, at the respective times and in manner following, that is to say, the said principal sum of £—— on the —— day of ——, which will be in the year 18——, and interest thereon, at the rate aforesaid, computed from the day of the date hereof, in equal portions, half-yearly, on the —— day of ——, and the —— day of ——, in each and every year, until the repayment of the said principal sum, the first of such half-yearly payments to be made on the —— day of —— next; And in case default shall be made by the said [*debtor*], his executors or administrators, in payment to the said [*creditor*], his executors or administrators, of the said principal sum, or of any half-yearly instalment of interest, or any part thereof respectively, on or at the several days or times aforesaid, then and in such case and so often as the same shall happen, it shall be lawful for the said [*creditor*], his executors or administrators, to issue execution, or to cause execution to be issued, upon or by virtue of the judgment to be entered up under the authority of the above-written warrant of attorney, for so much of the said interest or of the said principal sum, as the case may be, as shall be then in arrear and unpaid; And it is hereby agreed and declared, that it shall not be necessary for the said [*creditor*], his executors or administrators, to revive the said judgment, although more than one year shall have elapsed since the same was entered up as aforesaid, or the said [*debtor*] shall be then dead (a). Dated this —— day of ——, 18——.

Warrants of attorney not within the stat. 8 & 9 Will. 3, c. 11.

(a) It was formerly usual in warrants of attorney to introduce a declaration that it should not be necessary for the judgment creditor to enter any previous suggestion, or sue out any writ of *scire facias* or inquiry under the statute of 8 & 9 Will. 3, c. 11; but the clause is wholly superfluous, since it has been decided that this statute does not apply to warrants of attorney. Its object and effect were thus clearly explained by Lord C. J. *Tindal*, in the case of *Shaw v. Marquis of Worcester*, 4 Moore & Payne, 21. "As the law stood at the time this act was passed, if there was a judgment in a Court of law for a penal sum, either upon a demurrer, or upon a *cognovit actionem*, or by default, the defendant was

exposed to the danger of an execution for the whole penalty, and had no mode of preventing such an inconvenience but by filing a bill in equity; and the statute was penned to prevent such a mischief, by compelling the plaintiff to shew, upon the record in the Court of common law, the amount of the debt or damages really due, and of enabling the defendant to dispute such amount before a jury; thus making an appeal to a Court of equity altogether unnecessary. But, a warrant of attorney to enter up a judgment as a security for a debt on demand, was known in practice to the Courts of common law long before the passing of the statute of William. It was a proceeding subject to their cognizance and interference from the earliest times; and has been regulated by various rules of Court, as the protection of the defendant, or the purposes of justice, seem to demand. Such an instrument, therefore, does not appear to be within the mischief of the act." See some further observations on this statute, *ante*, Vol. 2, p. 355, 2nd ed.

TO SECURE  
PRINCIPAL AT  
A FUTURE DAY  
AND INTEREST  
HALF-YEARLY.

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WARRANT OF ATTORNEY *by* PRINCIPAL  
and SURETY, *with* DEFEAZANCE *indorsed*, for se-  
curing the PAYMENT of a DEBT on a FUTURE  
Day.

BY PRINCIPAL  
AND SURETY TO  
SECURE PAY-  
MENT OF A  
DEBT.

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To A. B. of —, and C. D. of —, attorneys of his  
Majesty's Court of King's Bench at Westminster,  
jointly and severally, or to any other attorney of the  
said Court.

**THESE** are to desire and authorize you, the attorneys  
above-named, or either of you, or any other attorney of  
the Court of King's Bench aforesaid, to appear for us,  
[debtor], of &c., and [surety], of &c., or the survivor of us, in  
the said Court, and receive a declaration for us (a), or the  
survivor of us in an action of debt for the sum of £—,

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(a) Under a warrant of attorney given in general terms by two or  
more persons, it is clear that judgment cannot be entered up against the  
survivors or survivor. *Gee v. Lane*, 15 East, 592. It is otherwise,  
however, as to a surviving plaintiff. *Fendall v. May*, 2 Maul. & Selw.

As to joint and  
several warrants  
of attorney,

BY PRINCIPAL  
AND SURETY TO  
SECURE PAY-  
MENT OF A  
DEBT.

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[*double the principal sum to be secured,*] upon a mutuatus against us or the survivor of us, at the suit of [*creditor*], of —, in the county of —, his executors or administrators, and thereupon to confess the same action, or else to suffer a judgment by nil dicunt or nil dicit, or otherwise, to pass against us or the survivor of us, in the said action, and to be thereupon forthwith entered up against us, or the survivor of us, of record of the said Court for the said sum of £—, together with costs of suit; And we the said [*debtor*] and [*surety*] do, and each of us doth hereby, further authorize and empower you, the said attorneys, or any one of you, after the said judgment shall be entered up as aforesaid, for us or either of us, and in our or either of our names or name, and as our or either of our act and deed, to sign, seal, and execute a good and sufficient release in the law to the said [*creditor*], his heirs, executors, and administrators, of all errors and writs of error, and all benefit and advantage thereof, and all defects and imperfections whatsoever, committed, occasioned, or suffered, in, about, or concerning the aforesaid judgment, or in, about, or concerning any writ, warrant, process, declaration, plea, entry, or other proceedings whatsoever, of or in any way concerning the same. And for what you the said attorneys, or any one of you, shall do or cause to be done in the premises, or any of them, this shall be to you and every of you a sufficient warrant and authority. In witness whereof we have hereto set our hands and seals, the — day of —, in the — year of the reign of our sovereign Lord William the Fourth, by the grace of God, of the United Kingdom of Great Britain and Ireland king,

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77. The distinction between a judgment at the *suit of*, and a judgment *against* a survivor, was also recognised in the case of *Raw v. Alderson*, 1 J. B. Moore, 145. A warrant of attorney, therefore, *by* several should express that judgment may be entered up against the cognizors jointly and severally, or, as here, (and which seems preferable), against the cognizors and the survivor; but where it is given *to* several, no mention of survivors is requisite.

It seems that where the warrant of attorney is joint and several, and judgment has been entered up against one of the defendants alone, it may afterwards be entered up against both. *Stoveld v. Eade*, 2 Moore & Scott, 361.



defender of the faith; and in the year of our Lord one thousand eight hundred and thirty —.

BY PRINCIPAL  
AND SURETY TO  
SECURE PAY-  
MENT OF A  
DEBT.

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(*To be written underneath.*)

WHEREAS the above-named [*debtor*] is indebted to the above-named [*creditor*] in the sum of £——, for goods sold and delivered, and the said [*creditor*] hath, at the request of the said [*debtor*], consented to forego the immediate payment thereof, on the proposal of the said [*creditor*] that the same should be secured by a warrant of attorney for entering on record a judgment against the said [*debtor*] and [*surety*], or the survivor of them, and that judgment might be forthwith entered up under the authority thereof. AND WHEREAS the said [*surety*], at the request of the said [*debtor*], and as surety for him, joined in the above-written warrant of attorney in pursuance of the said agreement; Now be it known, that in case default shall be made by the said [*debtor*] and [*surety*], their heirs, executors, or administrators, in paying to the said [*creditor*], his executors, administrators, or assigns, the said sum of £—— (*without interest*) on the —— day of —— next, clear of any deduction whatsoever, it shall be lawful for the said [*creditor*], his executors or administrators, immediately thereupon, or at any time thereafter, to issue execution, or to cause execution to be issued, upon or by virtue of the judgment to be entered up, under the authority of the above-written warrant of attorney, for the said sum of £——, or so much thereof as shall then remain unpaid, together with sheriff's poundage and all other incidental expenses. (*Add agreement to dispense with scire facias, &c., ut ante, p. 567.*)

TO SECURE AN  
IRREDEEMABLE  
ANNUITY.

WARRANT OF ATTORNEY and DEFEAZ-  
ANCE, *given by a BENEFICED CLERGYMAN, to se-  
cure to a Purchaser a LIFE ANNUITY not re-  
deemable (a), and not OTHERWISE SECURED.*

To — [names and descriptions of two attorneys of  
the Court in which the judgment is to be entered  
up], attorneys of his Majesty's Court of [name of  
Court] at Westminster, jointly and severally, or to  
any other attorney of the same Court.

THESE are to authorize and empower you, the attorneys  
above-named, or either of you, or any other attorney of the  
said Court of —, to appear for me, [debtor], of —, in  
the said Court forthwith, and receive a declaration for me in  
an action of debt, upon a mutuatus against me for the sum  
of £—, [double the amount of the consideration money  
paid for the annuity], for money borrowed, at the suit of  
[creditor], of —, his executors or administrators (b), and  
thereupon to confess the same action; and also to suffer

(a) The cognizor is here described as a clergyman, for the purpose of  
drawing attention to the fact, (shewn in a former note, *vide ante*, 561),  
that a warrant of attorney is the best personal security that a beneficed  
clergyman, as such, can give; and not because the instrument, under  
such circumstances, possesses any peculiarity, since one of the chief  
cautions to be observed in preparing it, is to abstain from all mention of  
the design to charge or affect the profits of the benefice.

Executors or  
administrators.

(b) An executor or administrator cannot enter up judgment by virtue  
of a warrant of attorney *unless named*; *Cowie v. Allaway*, 8 Durn. &  
East, 257; *Short v. Coglein*, 1 Anst. 225; even though the defeazance  
expresses that it is given to secure the payment of a debt to the cog-  
nizee, his *heirs, executors, administrators*, or assigns. *Henshaw v. Mat-  
thew*, 2 Moore & Payne, 157.

Husband and  
wife.

It may be observed that judgment cannot be entered up against hus-  
band and wife, on a warrant of attorney given by the wife *dum sola*,  
without leave of the Court. *Staples v. Purser*, 3 Moore & Scott, 800.

judgment by nil dicit, or otherwise, to pass against me in the same action, and to be forthwith entered up against me of record in the same Court, for the said sum of £——, together with costs of suit. And these are further to authorize and empower you my said attorneys, or any of you, after the said judgment shall be entered up as aforesaid, in my name and as my act and deed to execute one or more effectual release or releases in the law to the said [*creditor*], his executors or administrators, of all errors, writs of error, and all benefit and advantage thereof, and all defects and imperfections whatsoever, which may have been committed, or may have happened or arisen in or about or concerning the action or judgment aforesaid, or in or about or concerning any writ, warrant, process, declaration, plea, entry, or other proceeding relating thereto respectively; and for what you or any of you shall do or cause to be done in the premises, this shall be to you and every of you a sufficient warrant and authority.

IN WITNESS, &c.

TO SECURE AN  
IRREDEEMABLE  
ANNUITY.

*(To be written at the foot of the Warrant of Attorney.)*

WHEREAS the above-named [*debtor*] lately contracted with the above-named [*creditor*] for the sale to him of an absolute annuity or yearly sum of £——, to be payable during the term of sixty years, if the said [*debtor*] should so long live, at the price of £——. AND WHEREAS the said sum of £——, the consideration money for the said annuity, has been paid by the said [*creditor*] to the said [*debtor*], at the time of the execution of these presents, as the said [*debtor*] doth hereby acknowledge. AND WHEREAS at the time of the contract for the said annuity, it was stipulated and agreed between the said [*creditor*] and [*debtor*], that the same should be paid in even portions quarterly, on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of —— in every year, clear of all deductions for taxes or otherwise; the first of the said quarterly portions to be paid on the —— day of —— now next ensuing, if the said [*debtor*] shall be then living, together with a proportional part of the said annuity up to and inclusive of the day of the decease of the said [*debtor*], in case the said term of sixty years shall determine by such decease before the first of the said quarterly days of payment, or

TO SECURE AN  
IRREDEEMABLE  
ANNUITY.

afterwards in the interval between any of the same days, such proportional part to be paid immediately after the decease of the said [*debtor*] (c). AND WHEREAS the said

Stat. 4 Will. 4, c. 22, relating to the apportionment of rents, annuities, and other periodical payments.

Recites stat. 11 Geo. 2, c. 19.

(c) An important alteration has been made in the law relating to the apportionment of rents, annuities, and other periodical payments, by the following act of 4 Will. 4, c. 22, intituled "An Act to amend an Act of the eleventh Year of King George the Second, respecting the apportionment of Rents, Annuities, and other periodical Payments."

"Whereas, by an act passed in the eleventh year of the reign of his Majesty King George the Second, intituled 'An Act for the more effectual securing the Payment of Rents, and preventing Frauds by Tenants\*,' it was enacted, that where any tenant for life should happen to die before or on the day on which any rent was reserved or made payable upon any demise or lease of any lands, tenements, or hereditaments which determined on the death of such tenant for life, the executors or administrators of such tenant for life should and might, in an action on the case, recover of and from such under-tenant or under-tenants of such lands, tenements, or hereditaments, if such tenant for life die on the day on which the same was made payable, the whole, or if before such day, then a proportion of such rent, according to the time such tenant for life lived of the last year or quarter of a year, or other time in which the said rent was growing due as aforesaid, making all just allowances, or a proportionable part thereof respectively: and whereas doubts have been entertained whether the provisions of the said act apply to every case in which the interests of tenants determine on the death of the person by whom such interests have been created, and on the death of any life or lives for which such person was entitled to the lands demised, although every such case is within the mischief intended to have been remedied and prevented by the said act; and it is therefore desirable that such doubts should be removed by a declaratory law: and whereas, by law, rents, annuities, and other payments due at fixed or stated periods are not apportionable (unless express provision be made for the purpose), from which it often happens that persons (and their representatives) whose income is wholly or principally derived from these sources, by the determination thereof, before the period of payment arrives, are deprived of means to satisfy just demands, and other evils arise from such rents, annuities, and other payments, not being apportionable, which evils require remedy: Be it therefore enacted, That rents reserved and made payable on any demise or lease of lands, tenements, or hereditaments, which have been and shall be made, and which leases or demises deter-

Rents reserved on leases determining on the death of the per-

\* As to this Act, *vide ante*, Vol. 4, p. 355, 2nd ed.



[debtor] has executed the above-written warrant of attorney as a security for the payment of the said annuity or

TO SECURE AN  
IRREDEEMABLE  
ANNUITY.

mined or shall determine on the death of the person making the same (although such person was not strictly tenant for life thereof), or on the death of the life or lives for which such person was entitled to such hereditaments, shall, so far as respects the rents reserved by such leases, and the recovery of a proportion thereof by the person granting the same, his or her executors or administrators (as the case may be), be considered as within the provisions of the said recited act.

son making them (though not strictly tenant for life), or on the death of the tenant *pur autre vie*, to be considered as within the provisions of recited act.

Sect. 2. "That from and after the passing of this act, all rents service reserved on any lease by a tenant in fee or for any life interest, or by any lease granted under any power, (and which leases shall have been granted after the passing of this act), and all rents charge and other rents, annuities, pensions, dividends, moduses, compositions, and all other payments of every description, in the United Kingdom of Great Britain and Ireland, made payable or coming due at fixed periods, under any instrument that shall be executed after the passing of this act, or (being a will or testamentary instrument) that shall come into operation after the passing of this act, shall be apportioned so and in such manner, that, on the death of any person interested in any such rents, annuities, pensions, dividends, moduses, compositions, or other payments as aforesaid, or in the estate, fund, office, or benefice, from or in respect of which the same shall be issuing or derived, or on the determination by any other means whatsoever\* of the interest of any such person, he or she, and his or her executors, administrators, or assigns, shall be entitled to a proportion of such rents, annuities, pensions, dividends, moduses, compositions, and other payments, according to the time which shall have elapsed from the commencement or last period of payment thereof respectively (as the case may be), including the day of the death of such person, or of the determination of his or her interest, all just allowances and deductions in respect of charges on such rents, annuities, pensions, dividends, moduses, compositions, and other payments being made; and that every such person, his or her executors, administrators, and assigns, shall have such and the same remedies at law and in equity for recovering such apportioned parts of the said rents, annuities, pensions, dividends, moduses, compositions, and other payments, when the entire portion of which such apportioned parts shall form part shall become due and payable, and not before, as he, she, or they would have had for recovering and obtaining such entire rents, annuities, pensions, dividends,

All rents, annuities, and other payments coming due at fixed periods, to be apportioned;

subject to all just deductions.

Remedies for obtaining the apportioned parts.

\* These general words would seem to extend to a determination by forfeiture.

TO SECURE AN  
IRREDEEMABLE  
ANNUITY.

yearly sum of £—— on the several days and in manner hereinbefore mentioned; and it is intended that judgment shall be forthwith entered up against the said [*debtor*] by virtue of the said warrant of attorney. Now therefore be it known, that no execution shall be issued upon the said judgment, to be entered up by virtue of the above-written warrant of attorney as aforesaid, until the whole or some part of one of the said quarterly portions of the said annuity or

moduses, compositions, and other payments, if entitled thereto, but so that persons liable to pay rents reserved by any lease or demise, and the lands, tenements, and hereditaments comprised therein, shall not be resorted to for such apportioned parts specifically as aforesaid, but the entire rents of which such portions shall form a part shall be received and recovered by the person or persons who, if this act had not passed, would have been entitled to such entire rents; and such portions shall be recoverable from such person or persons by the parties entitled to the same under this act, in any action or suit at law or in equity.

Act not to apply  
to certain cases.

Sect. 3. "Provided always, that the provisions herein contained shall not apply to any case in which it shall be expressly stipulated that no apportionment shall take place, or to annual sums made payable in policies of assurance of any description."

Remarks upon  
the Apportion-  
ment Act of 4  
Will. 4, c. 22.

The apportionment clause has been retained in the precedent in the text, because it is doubtful whether the annuity is within the statute, which, it will be observed, enables the annuitant to recover the apportioned parts, "*when the entire portions, of which such apportioned parts form part, shall become due and payable;*" so that if the entire portion never becomes payable, the annuity absolutely ceasing (as here) at the determination of the interest of the immediate life owner, the act appears not to apply. Indeed, to give the annuitant a proportion in the instance in the text, would seem (supposing the instrument to be silent on the subject) to be an unauthorized interference with the contract of the parties; for why should one party be bound to pay, and the other entitled to receive more than such contract specifies? Where the annuity exists after the determination of the interest of the person entitled for life, the act, equitably enough, apportions the current payment between his representatives and the ulterior donee, and it will no doubt be held to reach the numerous class of cases in which a share of the public funds or annuities is given to a person for life. Even if the ulterior donee disposes of the stock before the next half-yearly dividend becomes "due and payable," it is conceived that the representatives of the deceased life owner must nevertheless wait for the apportioned part until such day of payment.

yearly sum of £——, or the proportional part of the said annuity, shall be in arrear and unpaid for the space of twenty days after any of the days so appointed for payment thereof respectively as aforesaid; but in case any one or more of such quarterly portions, or such proportional part of the said annuity as aforesaid, or some part thereof respectively, shall be so in arrear and unpaid, then and in such case, and from time to time, so often as the same shall happen, it shall be lawful for the said [*creditor*], his executors, administrators, or assigns, to issue execution, or cause execution to be issued, upon the said judgment for the amount of the arrears which shall from time to time be due, without issuing a writ of scire facias, or doing any other act for reviving the said judgment, although there shall have been no prior proceeding thereon, or no proceeding within one year immediately preceding the issuing of such execution, or although the said [*debtor*] shall have departed this life; and by every such execution the said [*creditor*], his executors, administrators, or assigns, shall be at liberty to levy the amount of the arrears then due, together with all the costs, charges, and expenses occasioned by the non-payment thereof. And it is hereby agreed and declared, that after the determination of the said annuity, by the decease of the said [*debtor*], or otherwise, and after full payment of all arrears of the same annuity and the proportional part thereof as aforesaid, and all the costs, charges, and expenses (if any), occasioned by the non-payment of the same respectively as aforesaid, the said [*creditor*], his executors, administrators, or assigns, will or shall, at the request and at the costs and charges of the said [*debtor*], his heirs, executors, or administrators, acknowledge satisfaction, or cause satisfaction to be acknowledged upon the record of the judgment to be entered up by virtue of the said warrant of attorney. Dated this —— day of ——, 18— (a).

TO SECURE AN  
IRREDEEMABLE  
ANNUITY.

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(a) The judgment in this case should be memorialized pursuant to statute 53 Geo. 3, c. 141, stated *ante*, Vol. 1, p. 330, 2nd ed.; for, though it has been recently decided that a judgment does not require enrolment where it forms a collateral security for an annuity granted by a contemporaneous deed, which recites the judgment and is inrolled; *Richardson v. Tomkies*, 2 Moore & Scott, 56; yet it seems to have been thought

As to memorial.

TO SECURE AN  
IRREDEEMABLE  
ANNUITY.

that the case would be different where the judgment constitutes the *sole* security. Lord C. J. *Tindal's* reasoning, that the words of the act point only at securities *inter partes*, seems scarcely compatible with such a distinction; but it is better not to risk the validity of the security by neglecting the enrolment of a warrant of attorney or judgment, where it constitutes the only security for the annuity, especially as in the case of *Nash v. Godmond*, 1 Barn. & Adol. 634, a judgment and a sequestration issued thereon were set aside on the ground that the memorial of the warrant of attorney, which was the sole security for the annuity, erroneously stated its amount, though the execution had been issued at the instance of the defendant himself. No attempt, however, was made in this case to support the warrant of attorney on the general ground, since discussed in the case of *Richardson v. Tomkies*.

*Vide* other forms of warrants of attorney, and other points relating thereto, *ante*, Vol. 2, p. 366, 2nd ed.

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STAMPS ON WARRANTS OF ATTORNEY,

IMPOSED BY STAT. 55 GEO. 3, c. 184.

WARRANT of attorney (with or without a release of errors) to confess and enter up a judgment in any of his Majesty's Courts at Westminster, or in any of the counties palatine of Chester, Lancaster, and Durham; which shall be given as a security for the payment of any sum or sums of money, or for the transfer of any share or shares in any of the government or parliamentary stocks or funds, or in the stock and funds of the Governor and Company of the Bank of England, or of the East India Company, or of the South Sea Company—

£ s. d.

The same duty as on a bond for the like purpose.\*

Save and except where such payment or transfer shall be already secured by a bond, mortgage, or other security, which shall have paid the ad valorem duty on bonds or mortgages imposed in this schedule, or by the act of the 44th, or the act of the 48th year of his Majesty's reign before mentioned; and also except where the warrant of attorney shall be given for securing any sum or sums of money, for which the person giving the same shall be in custody under an arrest; and in those cases a duty of .... 1 0 0

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\* As to the Stamp Duty on Bonds, *vide ante*, Vol. 3, p. 470, 2nd ed.



## STAT. 3 &amp; 4 WILL. 4, c. 9.

IT may be useful in this place to introduce the principal provisions of the recent act of 3 & 4 Will. 4, c. 97, intituled "An Act to prevent the selling and uttering of forged Stamps, &c." It enacts—

"That from and after the commencement of this act it shall be lawful for the commissioners of stamps, by writing under the hands of any two or more of them, to grant a licence free of expense to any person whom they in their discretion shall think fit and proper for the purpose (not being a distributor of stamps appointed by the said commissioners, nor a sub-distributor appointed by any such distributor,) to vend and deal in stamps at any place or places in Great Britain to be named in such licence: Provided always, that every person to whom any such licence shall be granted shall enter into a bond to his Majesty\*, his heirs and successors, in a penal sum of one hundred pounds, conditioned that such licensed person shall not sell or offer for sale or exchange, or keep or have in his possession for the purpose of sale or exchange, any stamp or stamps other than such as he shall have purchased or procured at the head office for stamps in Westminster or Edinburgh, or from some distributor of stamps duly appointed by the said commissioners, or from some person licensed to deal in stamps under the authority of this act: Provided always, that such bond shall not be liable to any stamp duty, and that one licence and one bond only shall be required for any number of persons in copartnership: And provided also, that it shall be lawful for the said commissioners, whenever they shall think fit, by notice in writing signed by any two or more of them, to revoke and make void any such licence as aforesaid.

3 & 4 WILL. 4,  
c. 97.

Commissioners of stamps may license persons to deal in stamps.

Persons licensed to give bond.

Condition thereof.

Bond not liable to stamp duty.

Licence may be revoked.

Sect. 2. "That in every such licence to vend or deal in stamps there shall be truly specified the proper Christian name and surname and place of abode of the person to whom the same shall be granted, and a true description of the house or shop or houses or shops in or at which he shall by such licence be authorized to vend or deal in stamps; and such person shall not be thereby authorized or entitled to vend or deal in stamps in or at any other house, shop, or place than such as shall be so specified and described in such licence.

Particulars to be specified in licenses.

Sect. 3. "That no person other than such distributor or sub-distributor of stamps as aforesaid shall vend or deal in stamps in any part of Great Britain without having duly obtained from the commissioners of stamps a licence for that purpose, which shall be subsisting in force and unrevoked at the time of such vending or dealing; and if any person other than such distributor or sub-distributor as aforesaid shall sell or offer for

No person to deal in stamps without such licence.

Penalty.

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\* This bond of course will constitute a lien on the obligor's lands.

3 & 4 WILL. 4,  
c. 97.

sale any vellum, parchment, or paper, stamped or marked with any stamp or mark, denoting or purporting to denote any stamp duty, or shall exchange any such stamped vellum, parchment, or paper for any other stamped vellum, parchment, or paper, or for any other article or thing, without having duly obtained and having in force such licence as aforesaid, authorizing him in that behalf, or in or at any house, shop, or place not specified and described in any such licence as aforesaid granted to him, he shall for every such offence forfeit the sum of twenty pounds; and if any proceedings shall be had for recovery of such penalty of twenty pounds, and it shall thereupon appear that any stamp or stamps impressed on any such vellum, parchment, or paper, which shall have been so sold or exchanged, or offered for sale or exchanged, was or were false, forged, or counterfeit, although the same shall not have been so alleged in the information or pleading, then and in such case the said penalty shall be doubled, and judgment shall be given against the offender for the sum of forty pounds, and the said special matter shall be stated in such judgment as the cause of such increase of penalty; and if on any such proceeding any issue shall be tried by a jury in which the selling or exchanging, or offering for sale or exchange, of such vellum, parchment, or paper, with any stamp or stamps thereon, shall be in question, such jury shall be required to say whether such stamp or stamps was or were false, forged, or counterfeit, or not: Provided always, that nothing herein contained shall extend to exempt any person from the legal consequences of selling, uttering, or having in possession any vellum, parchment, or paper with any false, forged, or counterfeit stamp or stamps thereon, knowing the same to be false, forged, or counterfeit, if such knowledge shall be duly proved in any criminal prosecution or proceeding against such person for any such offence.

Nothing herein to exempt persons from consequences of uttering forged stamps.

As to persons employed to write or ingross instruments liable to stamp duty.

Sect. 4. " Provided always, That it shall be lawful for any person employed to prepare, write, or ingross any deed or instrument liable to stamp duty to charge his employer with the amount of the stamp or stamps impressed on the vellum, parchment, or paper upon which such deed or instrument shall be written or ingrossed, without having obtained any such licence as aforesaid to vend or deal in stamps."

Sect. 5. Licensed dealers in stamps to paint their names, &c. in front of their houses or shops. Penalty. Proviso as to partners.

Sect. 6. Penalty on unlicensed persons painting on their shops any words importing that they are dealers in stamps.

Sect. 7. Allowance to be made for stamps in the possession of vendors at the time of the passing of this act. Proviso.

Sect. 8. Allowance to be made for stamps in the possession of licensed vendors dying, or becoming bankrupt or insolvent, or whose licences are revoked.

Sect. 9. Commissioners of stamps empowered to grant warrants to

search and inspect the stocks of stamps of distributors and licensed dealers. Power of entry. Penalty for refusing to aid in the execution of such warrants, or assaulting persons employed in the execution thereof, 507.

3 & 4 WILL. 4,  
c. 97.

Sect. 10. Acknowledgment to be given for stamps seized. Licensed vendor entitled to be paid the amount of genuine stamps seized, or to have them returned to him.

Sect. 11. Licensed vendors having counterfeit stamps in their possession liable to the penalties of vending forged stamps, unless it be proved that they were procured from some distributor or licensed vendor.

Sect. 12. "That if any person shall knowingly and without lawful excuse (the proof whereof shall lie on the person accused) have in his possession any false, forged, or counterfeit die, plate, or other instrument, or part of any such die, plate, or instrument, resembling or intended to resemble, either wholly or in part, any die, plate, or other instrument which at any time whatever hath been or shall or may be provided, made, or used, by or under the direction of the commissioners of stamps, for the purpose of expressing or denoting any stamp duty whatever; or if any person shall knowingly and without lawful excuse (the proof whereof shall lie on the person accused) have in his possession any vellum, parchment, or paper having thereon the impression of any such false, forged, or counterfeit die, plate, or other instrument, or part of any such die, plate, or other instrument as aforesaid, or having thereon any false, forged, or counterfeit stamp, mark, or impression resembling or representing, either wholly or in part, or intended or liable to pass or be mistaken for, the stamp, mark, or impression of any such die, plate, or other instrument which hath been or shall or may be so provided, made, or used as aforesaid, knowing such false, forged, or counterfeit stamp, mark, or impression to be false, forged, or counterfeit; or if any person shall fraudulently use, join, fix, or place for, with, or upon any vellum, parchment, or paper any stamp, mark, or impression which shall have been cut, torn, or gotten off or removed from any other vellum, parchment, or paper; or if any person shall fraudulently erase, cut, scrape, discharge, or get out of or from any stamped vellum, parchment, or paper any name, sum, date, or other matter or thing thereon written, printed, or expressed, with intent to use any stamp or mark then impressed, or being upon such vellum, parchment, or paper, or that the same may be used for any deed, instrument, matter, or thing in respect whereof any stamp duty is or shall or may be or become payable; or if any person shall knowingly use, utter, sell, or expose to sale, or shall knowingly and without lawful excuse (the proof whereof shall lie on the person accused) have in his possession any stamped vellum, parchment, or paper from or off or out of which any such name, sum, date, or other matter or thing as aforesaid shall have been fraudulently erased, cut, scraped, discharged, or gotten as

Persons knowingly having forged dies or stamps in their possession;

or fraudulently affixing stamps, &c.;

or erasing names, dates, &c. with intent to use the stamps again;

or knowingly using any stamped vellum, &c. from which any name, date, &c. shall have been fraudulently erased;

3 & 4 WILL. 9,  
c. 97.

guilty of felony.

aforesaid; then and in every such case every person so offending, and every person knowingly and wilfully aiding, abetting, or assisting any person in committing any such offence, and being thereof lawfully convicted, shall be adjudged guilty of felony, and shall be liable, at the discretion of the Court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years nor less than two years."

Sect. 13. Houses of persons suspected of being concerned in the forging of dies or stamps, or in the commission of other felonious acts, may be searched.

Sect. 14. Penalty on persons hawking stamps, 20*l*. Hawkers of stamps may be apprehended, and taken before a justice of the peace.

Sect. 15. Justices may issue warrants for seizing stamps suspected to be stolen or fraudulently obtained.

Commissioners  
may discontinue  
dies, and provide  
new ones  
in lieu thereof.

Sect. 16. "That it shall be lawful for the commissioners of stamps from time to time, whenever they shall deem it necessary or expedient, to discontinue the use of all or any of the dies heretofore provided or used, or at any time hereafter to be provided or used, for denoting or marking any stamp duty which now is or at any time hereafter shall be by law payable for or in respect of any matter or thing whatsoever, and to cause any new die or dies, with such altered device or devices respectively thereon as the said commissioners shall think fit, to be provided and used in lieu of the die or dies so discontinued.

After a day fixed  
by notice in  
the Gazette the  
new dies to be  
the only true  
and lawful dies.

Sect. 17. "That whenever the said commissioners shall determine to discontinue the use of any die or dies, and shall provide any new die or dies to be used in lieu thereof, and the said commissioners shall give public notice thereof by advertisement in the London and Edinburgh Gazettes respectively, then from and after such day or time as shall be fixed and appointed by such advertisement, not being within the space of one calendar month next after the same shall have been published in the said Gazettes respectively, the said new die or dies so provided shall be the only true and lawful die or dies for denoting the duty charged or chargeable in any case to which such die or dies is or are respectively applicable; and all deeds and instruments for the marking or stamping of which any such new die or dies shall have been provided, and which after the day so fixed and appointed as aforesaid shall be ingrossed, written, or printed upon vellum, parchment, or paper stamped or marked with any other die or dies than the said new die or dies so provided for the same as aforesaid, and also all such deeds and instruments as aforesaid, which, having been ingrossed, written, or printed upon vellum, parchment, or paper stamped or marked as last aforesaid, shall not have been executed or signed by any party thereto before or upon the said day so fixed and appointed as aforesaid, shall respectively be deemed to be ingrossed, written, or printed on vellum, parchment, or paper not duly stamped or

Deeds, &c.  
stamped with  
any other dies  
after the day so  
fixed to be  
deemed not duly  
stamped.



marked as required by law: Provided always, that in the case of any deed or instrument required to be stamped or marked with such new die or dies as aforesaid, which shall be ingrossed, written, or printed upon vellum, parchment, or paper stamped or marked otherwise than with such new die or dies, and which after the said day or time so fixed and appointed as aforesaid shall be first executed or signed by any party thereto at any place out of the United Kingdom, it shall be lawful for the said commissioners, and they are hereby required, upon proof of the facts to their satisfaction, to cancel and allow the stamp or stamps impressed on such deed or instrument, and to cause such deed or instrument to be stamped or marked with such new die or dies, to the same amount of duty, without payment of any penalty, provided such deed or instrument shall be produced to the said commissioners for the purpose aforesaid within one calendar month next after the same shall arrive in this kingdom.

Sect. 18. "Provided always, that whenever the said commissioners shall discontinue the use of any die or dies, and shall provide any new die or dies to be used in lieu thereof, and shall give public notice thereof by advertisement in the manner directed by this act, it shall be lawful for all persons who shall have in their custody or possession any vellum, parchment, or paper stamped or marked with any die or dies in lieu of which any such new die or dies shall have been provided, and which vellum, parchment, or paper shall, by reason of the providing of such new die or dies, be rendered useless or inapplicable for the purposes for which the same was originally designed, to send the same to the head office for stamps in Westminster or Edinburgh at any time within three calendar months next after the day so fixed and appointed by such advertisement as aforesaid\*; and it shall be lawful for the said commissioners, or for any officer of stamp duties duly authorized in that behalf, to cause the stamp or stamps upon such vellum, parchment, or paper to be cancelled, and such vellum, parchment, or paper, or (if the said commissioners or such officer shall think fit) any other vellum, parchment, or paper to be duly stamped or marked with such new die or dies in lieu of and to an equal amount with the stamp or stamps so cancelled.

Stamps rendered useless by the discontinuance of old dies and the providing of new dies, to be allowed and exchanged.

Sect. 19. "That in any case in which the commissioners of stamps are or shall be by this act or any other act relating to stamp duties authorized and directed to cancel stamps spoiled or rendered useless or unfit for the purpose intended, and to make allowance for the same by giving other stamps in lieu thereof, it shall be lawful for the said commissioners, if they in their discretion shall think fit, instead of giving stamps, to refund and repay to the party entitled to such allowance the amount thereof in

Commissioners authorized to refund in money the amount of stamps spoiled or rendered useless.

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\* Extended to 13 Feb. 1835, by act of 4 & 5 Will. 4, c. 57, in regard to the stamps on bills of exchange, promissory notes, and receipts, the dies on which have been altered by the commissioners.

3 & 4 WILL. 4,  
c. 97.

money, deducting therefrom such per-centage as is allowed by law on the purchase of stamps of the same description as those in respect of which such allowance shall be made; and it shall also be lawful for the said commissioners, if they in their discretion shall think fit, to refund and repay to any person possessed of any stamp or stamps which shall not have been spoiled or rendered useless or unfit for the purpose intended, but for which he shall have no immediate use or occasion, the amount or value of such stamp or stamps in money, deducting therefrom such per-centage as aforesaid upon his delivering up such stamp or stamps to the said commissioners to be cancelled, and proving to their satisfaction that the same was or were purchased by him with a *bonâ fide* intent to use the same, and that he has paid the full amount or value denoted by such stamp or stamps, without any deduction, save and except only the amount of such per-centage as aforesaid, and further, that such stamp or stamps was or were so purchased within the period of three calendar months next preceding, and if the same was or were so purchased after the passing of this act, then that the same was or were so purchased by such person at the head office for stamps in Westminster or Edinburgh, or from some distributor or sub-distributor of stamps duly appointed as aforesaid, or from some person licensed under the authority of this act to vend or deal in stamps."

Construction of  
the terms used  
in this act.

Sect. 27. " And, in order to avoid the frequent use of divers terms and expressions in this act, and to prevent any misconstruction of the terms and expressions used therein, be it enacted, That wherever in this act, with reference to any person, matter, or thing, any word or words is or are used importing the singular number or the masculine gender only, yet such word or words shall be understood and construed to include several persons as well as one person, females as well as males, bodies politic or corporate as well as individuals, and several matters or things as well as one matter or thing, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such construction.

Commencement  
of act.

Sect. 28. " And be it enacted, That this act shall commence and take effect on the 11th day of October, 1833."

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(a) In the last session of Parliament (1834) was passed "An Act for the abolition of Fines and Recoveries, and for the substitution of more simple modes of Assurance in Ireland." (4 Will 4, c. 92).

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